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PREFACE TO THE SECOND EDITION.

A NEW edition of the late Mr. Oke's Work on the Licensing Laws being necessitated by the passing of the Licensing Act, 1874, Messrs. Butterworth entrusted its preparation to the present Editor, as being cognate to some of his other works.

He has carefully eliminated the repealed sections of the Act of 1872, and introduced the provisions of the new Act in the appropriate divisions, whilst at the same time adhering strictly to the arrangement of the original Work. All the decisions of the Courts upon the Licensing Laws up to the present time have also been incorporated; and the voluminous references throughout the Work have been made to correspond.

The Editor trusts that his labours will fully sustain the reputation of Mr. Oke's Work as a reliable guide to the several branches of the Licensing Laws; and that it will be found still to receive the confidence of

the legal profession, the magistracy and the large body of clerks to justices whose peculiar duty it is to advise the justices in Licensing Sessions.

The Editor acknowledges the assistance that he has received from his son, Mr. Alexander Glen, B.A., LL.B., Barrister-at-Law.

W. C. G.

5, ELM COURT, TEMPLE,
25th August, 1874.

PREFACE TO THE FIRST EDITION.

THE object of this little Treatise is to supply a complete work of the Laws regulating the licensing and management of Public Houses and other places of public entertainment and resort, with other cognate matters, which, having some practical acquaintance with the subject, I have been induced to prepare for the Press.

The Licensing Act, 1872, being the basis of the Work, its provisions, together with the multifarious existing enactments in the previous Acts, are embodied in their proper places,—a task, owing to the defects in that Act, the complications made by amendments instead of repeals, and the many questions publicly raised during the short time it has been in operation, by no means a light one.

Departing from the usual method of editing a statute,—the giving it in the order of the sections in the first part with notes, and the supplemental statutes in chronological order in another part—it appeared to me, and I had determined while the Bill was before

Parliament (seeing that its provisions were not placed in their natural order, and that into most of them large portions of the earlier Acts must be incorporated), that the most convenient mode for practical use was to arrange the Work under appropriate chapters or sections, each containing *all* the enactments *in extenso*, with the notes and cases bearing upon it, and the necessary Forms, and so presenting at one view the whole law upon any branch of it.

This plan, which is the one adopted, has occasioned me much additional labour and delayed the publication of the Work some weeks. The delay, however, has enabled me to give further consideration to the doubtful points arising upon certain sections of the new Act, particularly that on the construction of sections 45 and 46,* and to insert the Forms of Licences prescribed by the Home Office† (which I had the honor of revising), as well as to adapt all other Forms, of which a comprehensive body is given throughout the Work,‡ to those Official Forms.

Besides the facilities given by the new arrangement adopted, and the correction of the often-misleading side notes in the enactments, there are others afforded by

* See pp. 48, 49.

† Appendix I., pp. 290—298.

‡ See Table of the Forms, pp. xxix—xxxi.

the Introductory Notes, a Table of Contents, Cases cited, Statutes referred to, a Table of Acts passed previously to the Act of 1872, showing how they have been dealt with by subsequent legislation, and where the enactments in force are set out or referred to in the body of the work,* a Table of Offences,† and a very copious Index.

I trust that my expectations of the general usefulness of this little volume, upon which I have bestowed every possible care (some unavoidable errors must have crept in, which will no doubt be excused), will be realized by its receiving a fair share of the patronage accorded to my other works and to those of other Editors of the Licensing Act, 1872.

I should not omit to acknowledge here, that I am indebted for much valuable information and assistance to the officials at the Home Office, many gentlemen connected with the Inland Revenue Department, to Mr. Child, the Solicitor of the Incorporated Society of Licensed Victuallers, Mr. Youle, the Clerk to the Licensing Justices for the City, and many other such clerks in the country.

In conclusion, I feel bound to say that, although the Licensing Act, 1872, is intricate and perplexing, I think

* Appendix II., pp. 299—315.

† Appendix III., pp. 316—326.

it will not, upon more mature consideration than has hitherto been given to it, be found so unworkable as some persons have stated it to be,—not being amenable to the severe criticisms passed upon it; and that, if the magistrates, as they have done at the majority of Benches, will, in carrying out its provisions, read them with a desire to apply to them fairly the usual principles of construing acts of parliament, a very great improvement upon the previously existing state of things will be effected.

G. C. O.

LONDON,
26th September, 1872.

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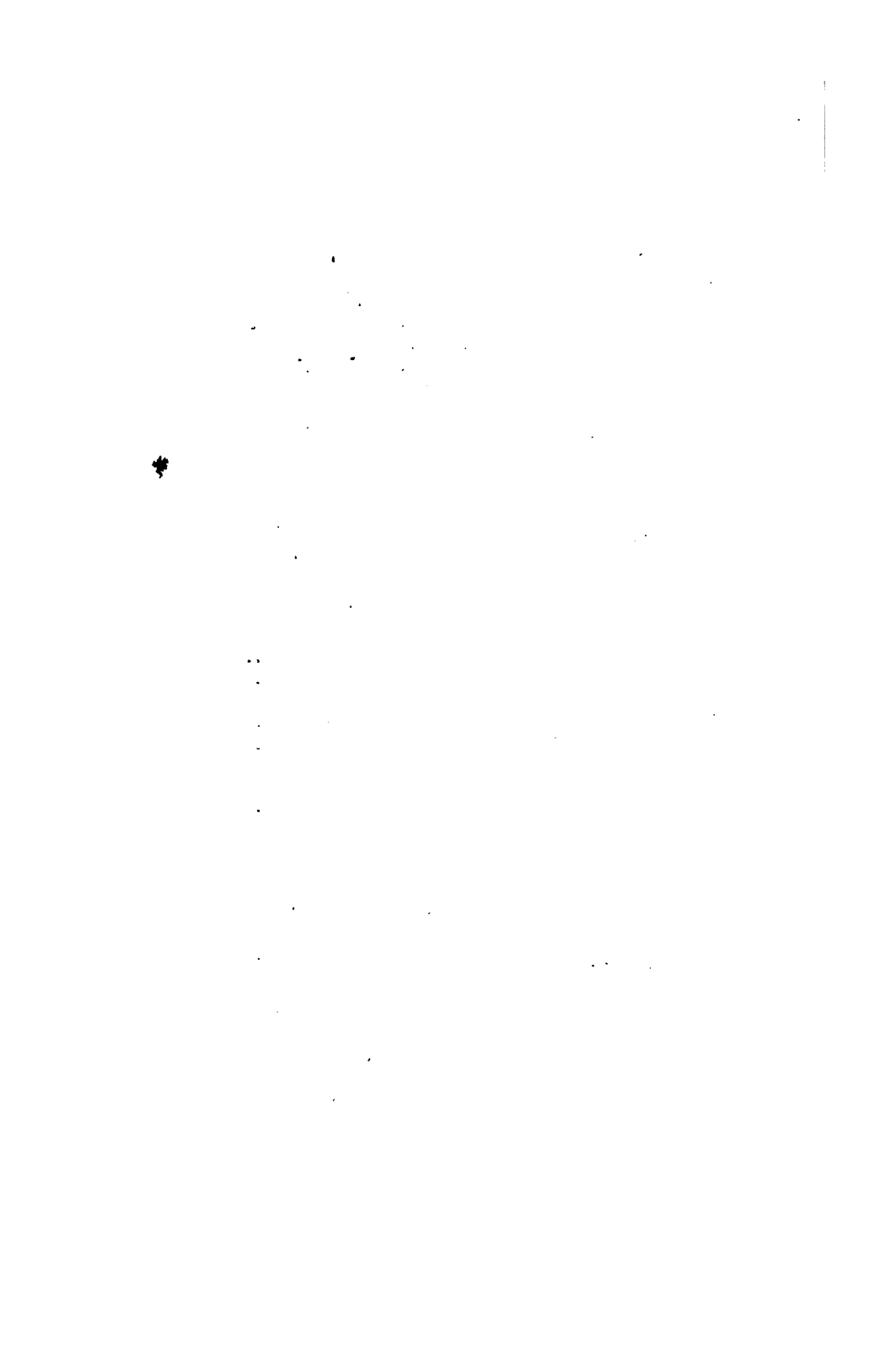
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LICENSING INNS, &c. &c.

INTRODUCTORY NOTES.

THE LICENSING ACT, 1872, 35 & 36 Vict. c. 94, which came into operation on the 11th August, 1872—the day after it received the royal assent,—although it does not claim to be, and in fact is not, a consolidation act, repeals fifteen previous acts, in whole or in part (retaining, however, and making permanent the principal provisions of the Wine and Beerhouse Acts, 1869 and 1870), and is a measure of much importance and usefulness, and but for its want of symmetry in many parts, owing to the numerous amendments made in the bill almost at the last moment, would not fall far short of an ordinary consolidating measure; inasmuch as it places upon one uniform footing the qualifications of houses to be licensed, the several modes which before existed in applying for and granting licences and certificates for alehouses, beerhouses and other places where intoxicating

Description
of the Licens-
ing Act, 35 &
36 Vict. c. 94.

liquors are sold by retail, and their renewal and transfer, applies the same police regulations as to illicit sales, public order and adulteration of liquors to each; contains uniform regulations for the closing of licensed premises, the mode of recovery of penalties, disqualifying houses, &c., at the same time repealing the enactments which interfered with this uniformity. Upon the whole, although there are many inconsistencies and deficiencies, inevitable under the circumstances, and a want of uniformity of expression in some of the sections, the allusion to the act in her Majesty's Speech on the prorogation of parliament, on the day the act received the royal assent, that "the enactments embodied in the measure for the regulation of the licensing system constitutes a sensible improvement of the existing law," is not a mere compliment paid to the members of the legislature.

The course of legislation as to public-houses and other places for the sale of intoxicating liquors.

Without attempting to give a history of the course of legislation as to public-houses and other places where intoxicating liquors are sold, it will, perhaps, be useful to state the date of the acts which are dealt with in the new act, and their general object or effect:—

1828.

In 1828, the first act dealt with, 9 Geo. 4, c. 61, which related to inns, alehouses and victualling-houses, was passed, and it recited that "it is expedient to reduce into one act the laws relative to the licensing by justices of the peace of persons keeping, or being about to keep, inns, alehouses and victualling-houses, to sell excise-

"able liquors by retail, to be drunk or consumed
"on the premises:"

The course of
legislation as
to public-
houses and
other places
for the sale of
intoxicating
liquors.

In 1830, the first Beer Act, 11 Geo. 4 & 1 Will. 4,
c. 64, was passed, reciting that "it is expedient,
"for the better supplying the public with beer in
"England, to give greater facilities for the sale
"thereof than are at present afforded by licences
"to keepers of inns, alehouses and victualling-
"houses."

1830.

In 1834, the amended Beer Act, 4 & 5 Will. 4, 1834.
c. 85, was passed, and it recited that "much evil
"has arisen from the management and conduct of
"houses in which beer and cider is sold by retail
"under the provisions" of the 1 Will. 4, c. 64,
and that it was "expedient to amend the provi-
"sions of the said act in certain particulars."

In 1840, another amended Beer Act, 3 & 4 1840.
Vict. c. 61, was passed, which placed further
restrictions on beerhouses, and contained various
regulations as to the hours of closing them in the
metropolis and in the country generally:

In 1860, the Refreshment Houses Act, 23 & 24 1830.
Vict. c. 27, was passed, which regulated the
licensing of refreshment-houses and the granting
of wine licences:

In 1864, the Public House Closing Act, 27 & 28 1864.
Vict. c. 64, which further regulated the closing
of public-houses and refreshment-houses, abso-
lutely in the metropolis, but in certain boroughs
and districts if they adopted it; at the same time
giving power to the local authority to exempt
persons from its provisions on special occasions:

In 1865, the last-named act was amended, in 1865.

Laws as to Licensing Inns, &c.

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respect to the local authority to grant exemptions, and empowering licensing justices to grant exemptions in certain other cases. These two acts still remain in force so far as they relate to refreshment-houses in which intoxicating liquors are not sold :

1869.

In 1869, the Wine and Beerhouse Act, 32 & 33 Vict. c. 27, was passed, which was amended in 1870 by the 33 & 34 Vict. c. 29, both acts providing for the first time that excise licences for beerhouses, refreshment-houses, and sales of intoxicating liquors at certain other places should not be granted unless a certificate was first obtained from justices in the same way as licences for public-houses were granted. These two acts were then of a temporary nature :

1871.

In 1871 the 34 & 35 Vict. c. 88, suspended the grant of these certificates and licences for ale-houses for new houses until the 1st September, 1872, and is now repealed.

1872.

Changes
made by the
act 35 & 36
Vict. c. 94.

With regard to the Act of 1872, 35 & 36 Vict. c. 94, the plan we have adopted in arranging the various branches of the subject of the work renders unnecessary an elaborate introduction or reference to the changes which it makes in the law ; but a few of the most important alterations may be shortly stated, viz.,—

1. An uniform mode of application to justices for licences and certificates for all houses for the sale of intoxicating liquors :
2. An uniform mode of granting, renewing or transferring licences and certificates :

3. Extending the previous laws by empowering justices to grant several additional licences, viz.,—additional licences to sell strong beer in less quantities than four and a-half gallons or two dozen quart bottles,—to grocers and other shopkeepers to sell wine or liqueurs or spirits, or all by separate licences,—for the sale of sweets or made wines,—and for the retail of liqueurs or spirits by wholesale spirit dealers :
Changes made by the act, 25 & 26 Vict. c. 94.
4. Authorizing the grant of six-day licences to enable licensed premises to be closed on Sundays :
5. Entirely new provisions for confirming the grant of new licences and certificates by a standing committee of justices in counties, and in boroughs where there are ten or less than ten justices, by two special modes provided :
6. New provisions empowering the licensing justices to remove licences from one part of a district to another part, or from one district to another district :
7. Various amendments of the law as to the qualifications necessary for houses, substituting annual value for amount of rating, and as to the disqualifications of licensed persons :
8. New provisions for keeping a register of licences, for inspecting it, and for recording convictions therein :
9. A consolidation, with amendments (and in some cases increased penalties), of the penal clauses of acts as to illicit sales, offences as to public order, such as those relating to drunkards, disorderly conduct, harbouring prostitutes or constables, and permitting gaming :

Changes
made by the
act, 35 & 36
Vict. c. 94.

10. More stringent provisions as to the adulteration of liquors, including power to the police to procure samples of it, and to inspect the vessels containing it, and provisions for analyzing it; and where the offender's licence is not ordered to be forfeited, the police are to placard his conviction outside his premises:
11. New provisions for the protection of owners of licensed premises from the offences of the licensed persons, especially where the premises are disqualified from having a licence attached to it for a limited or unlimited period:
12. New and comprehensive provisions as to the hours for opening and closing *all* licensed premises (excepting sales to railway passengers, travellers and lodgers, and at refreshment-houses), with powers of exempting certain premises therefrom, given to the magistrates and the police authorities:
13. Amendments of the law as to the hours of opening, &c. certain refreshment-houses:
14. An uniform mode of procedure for the recovery of penalties, their application, and appealing against convictions:
15. New provisions for recording convictions of licensed persons by indorsement on their licences or certificates, forfeiture of licences, &c., and disqualifications of the holders of licences, &c., and the licensed premises.

Thus far the late Mr. Oke, to whose abilities, as a sound magisterial adviser, the present editor of this work desires to record a tribute of respect.

The Licensing Act of 1874, 37 & 38 Vict. c. 49, is an amendment of the Licensing Act, 1872, and, by sect. 1, is to be construed therewith. The following is an outline of the amendments which it makes in the Act of 1872 :—

1874.

1. The hours of closing licensed houses are slightly altered, and are regulated according to three scales, viz., one for the metropolitan district, one for other places within the metropolitan police district and for towns and populous places, and one for all remaining places.
2. The exemption as to licensed houses near theatres is repealed.
3. Certain exemptions and grants of licences are extended to beerhouses.
4. Power is given to the licensing justices to vary the hours of closing premises in the afternoons of Sundays, Good Fridays and Christmas Days.
5. Early closing licences may be obtained at a reduced rate.
6. A further reduction may be made if an early closing licence is also a six-day licence.
7. The penalty for selling during prohibited hours is the same as under the former Act, but the last clause is altered to "allows any intoxicating liquors, *although purchased before the hour of closing*, to be consumed in such premises," the words in italics being new.
8. The exemptions as to sale of liquors to *bonâ fide* travellers and at railway stations are repealed, the former being more fully explained.

9. Night refreshment-houses are not to be kept open longer than other licensed houses in the same neighbourhood.
10. The minimum to which penalties under the Acts may be reduced is no longer applicable to first offences.
11. A conviction need not necessarily be recorded on the licence, but the Court may, as part of its sentence, declare that it shall be so recorded.
12. A conviction for an offence against any act in force relating to adulteration of drink may be recorded on the licence as above mentioned.
13. After a first conviction for making internal communication between licensed and unlicensed premises, for forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870, for selling spirits without a spirit licence, or for any felony, application may be made to a court of summary jurisdiction for authority to carry on the same business in the premises till the next special sessions for licensing, when a further application must be made.
14. A constable is only to enter licensed premises or premises as to which an occasional licence is in force, in order to prevent or detect violations of the Licensing Acts, which it is his duty to enforce. The penalty for obstructing him remains the same, but that for not allowing him to take account of intoxicating liquor on the premises, or for not assisting him is not re-enacted.
15. Search warrants may be issued as before, but now, on a conviction for unlawfully selling,

&c. by retail, the intoxicating liquor seized is to be forfeited with the vessels containing it, and any person found on the premises at the time of the seizure is *prima facie* to be deemed to have been there for the purpose of illegally dealing in intoxicating liquor.

16. Occasional licences are required for selling intoxicating liquor at fairs and races.
17. An occasional licence may authorize the sale of beer, &c. from such hour after sunrise to such hour not later than ten o'clock at night, as the licensing justice may specify.
18. With regard to offences against public order, no distinction is to be made between occasional and other licences.
19. A deficiency in the quota of borough justices qualified to form a joint committee for the borough is to be supplied by qualified county justices.
20. Any one interested in premises about to be constructed or in course of construction may obtain a provisional grant and confirmation of a licence for the premises, but these are not to be valid until made final after completion of the premises, and after due notice. These regulations apply to a provisional removal to other premises.
21. Separate justices' licences are not to be required, in case of separate excise licences.
22. Licences for consumption *off* the premises are not to require confirmation.

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23. A joint committee may make rules as to proceedings for the confirmation of new licences.
24. On application for renewal of a licence, personal attendance is not to be required, unless for special reason, in which case only notice of adjournment of the general licensing meeting need be served on the applicant. Notices of intention to oppose a renewal are to state the grounds of opposition.
25. There is to be no appeal to quarter sessions as to grants of new certificates under the Wine and Beerhouse Acts, 1869 and 1870.
26. The licensing justices, instead of the commissioners of inland revenue, are to direct the form, &c. of the notice to be fixed on licensed premises.
27. Any one possessing an interest in licensed premises may be registered as an owner thereof.
28. Licensed persons are not to be liable to penalties for supplying liquor to private friends without charge.
29. A retail licence to sell beer for consumption off the premises may be granted at special sessions to a holder of a strong beer dealer's wholesale excise licence.
30. Definitions are given of "metropolitan district," "town," "populous place," "occasional licence" and "new licence," the second and last being alterations.
31. The following sections of the Act of 1872 are repealed, viz. sections 19—22, 24, 35, and parts of sections 5, 6, 13, 14, 16, 17, 28, 56 and 74.

Besides the licences grantable by justices for certain special occasions (some of which are not within the new acts), the orders exempting the holder from certain provisions as to the hours of closing his premises (which are obtained in the metropolis from the police authorities, and in the country from the justices in petty sessions), the six-day or week-day licence and the early-closing licence, licences or certificates for the following purposes must now, by virtue of the joint provisions of 32 & 33 Vict. c. 27, s. 4, and the Licensing Act, 1872, be obtained from the licensing justices before the revenue licence is granted:—

The licences and certificates which must now be obtained from the magistrates.

1. *Alehouses.* A licence to sell exciseable liquors All Liquors. by retail to be consumed on or off the premises (9 Geo. 4, c. 61, s. 1).
- 2 and 3. *Beerhouses.* A certificate to sell beer to be Beer. consumed *on* the premises,—or *off* the premises (1 Will. 4, c. 64, ss. 1, 2; 4 & 5 Will. 4, c. 85, s. 1; 3 & 4 Vict. c. 61, s. 1), or foreign wine (24 & 25 Vict. c. 91, s. 10); but not spirits (1 Will. 4, c. 64, s. 1; 4 & 5 Will. 4, c. 85, ss. 16, 20).
4. *Cider Licence.* A certificate to sell cider by retail Cider. to be consumed *on* or *off* the premises (1 Will. 4, c. 64, s. 30).
5. *Confectioners being licensed by the Excise to* Wine. *keep a Refreshment-house.* A certificate to sell foreign and British wine to be consumed *on* the premises (23 Vict. c. 27, ss. 1, 8), and sweets (26 & 27 Vict. c. 33, s. 18; see No. 8).

- Wine.** 6. *Eating-house Keepers.* Same certificate as No. 5, when licensed to keep a refreshment-house (23 Vict. c. 27, s. 7).
- Wine.** 7. *Grocers and other Shopkeepers,—or* those who are licensed dealers in wine. A licence to sell in bottles only foreign wine *not* to be consumed on the premises (23 Vict. c. 27, s. 3). For spirits also, see No. 10; sweets, No. 8.
- Sweets.** 8. *Sweets.* A licence for the sale of sweets or made wines, as if wine (35 & 36 Vict. c. 94, s. 74). See also Nos. 5, 6, 7.
- Bottled beer.** 9. *Bottled Beer.* A certificate for sale of, by holders of strong beer licences, *not* to be consumed on the premises (26 & 27 Vict. c. 33, s. 1; 33 & 34 Vict. c. 29, s. 10, and 37 & 38 Vict. c. 49, s. 31).
- Spirits and liqueurs.** 10. *Spirits and Liqueurs.* A certificate to licensed dealers in spirits to retail spirits *or* liqueurs in bottles (24 & 25 Vict. c. 21, s. 2),—*or* to persons holding a wholesale spirit dealer's licence (whose premises are not exclusively used for the sale of intoxicating liquors, 35 & 36 Vict. c. 94, s. 68), to sell liqueurs *or* spirits by retail (s. 69),—in both cases *not* to be consumed on the premises.
- Table beer.** 11. *Table Beer.* A certificate for sale of, *not* to be consumed on the premises (24 & 25 Vict. c. 21, s. 3).

**Coffee-house
keepers.**

It should be mentioned that coffee-house keepers not having a beer licence do not come within the operation of any act if they close their premises between 10 P.M. and 5 A.M.; if they do not then

close, the houses are commonly called night-houses, and are deemed refreshment-houses (23 Vict. c. 27, s. 6; 24 & 25 Vict. c. 91, s. 8), not requiring the justices' licence; but if they sell intoxicating liquors, require, of course, the usual licences or certificates for wine, beer, or spirits. Except in the case named in No. 1 (alehouses), no licence can be granted for the sale of *spirits* by retail to be consumed *on* the premises, and therefore beerhouse keepers, refreshment-house keepers, confectioners, eating-house keepers, grocers and other shopkeepers, sellers of sweets, bottled beer and table beer, cannot hold such a licence in respect of the same premises. The sale of liqueurs stands in the same position. But licences to sell foreign *wine* by retail may be taken out by any of them; some of them only, viz., grocers and other shopkeepers, being prohibited from selling it to be consumed on their premises.

As the majority of the provisions of The Licensing Acts, 1872 and 1874, apply to *all* the licensed houses for which justices are empowered to grant licences or certificates (and when they do not the fact is pointed out), we propose by a new arrangement of its several provisions as to England, and those in force of the earlier acts, to bring all the clauses relating to the same matter together in distinct chapters or sections, incorporating the necessary forms therein, viz.,—

Division of
the work
into chapters.

Chapter I. Preliminary Matters, Definitions of
Terms, &c. &c., p. 16.

- Chapter II. Grant of New Licences and Certificates by Justices, p. 39.
- „ III. Confirmation of Grant of New Licences and Certificates by Licensing Committee, p. 94.
- „ IV. Renewal of Licences and Certificates by Licensing Justices, p. 100.
- „ V. Transfer of Licences and Certificates by Licensing Justices, p. 107.
- „ VI. Appeal to Quarter Sessions against Licensing Justices' Refusal to renew or transfer a Licence or Certificate, p. 122.
- „ VII. Register of Licences and Certificates granted, &c., p. 129.
- „ VIII. Hours for Opening and Closing Premises, and granting Exemptions, p. 133.
- „ IX. Penalties, &c. incurred by Licensed Persons for Offences, p. 154.
- „ X. Repeated Convictions and recording same, Forfeitures and Disqualifications, &c., p. 187.
- „ XI. Penalties incurred by Unlicensed Persons for Offences, p. 201.
- „ XII. Mode of Recovery of Penalties, &c. (except Excise), and Appeals, &c., p. 210.
- „ XIII. Protection of Owners of Licensed Premises, p. 225.
- „ XIV. As to Refreshment-Houses in which Intoxicating Liquors not sold, p. 230.

Chapter XV. Excise Penalties and their Recovery,
p. 245.

„ **XVI. As to Billiard Licences,** p. 256.

„ **XVII. Occasional Licences not within the**
Licensing Act, 1872, p. 268.

„ **XVIII. Miscellaneous Licences granted by Jus-**
tices, and other Matters, p. 278.

CHAPTER I.

PRELIMINARY MATTERS, DEFINITIONS OF TERMS, &c.

35 & 36 Vict.
c. 94.

Preamble.

THE 35 & 36 Vict. c. 94, "An Act for regulating the Sale of Intoxicating Liquors," which came into operation on the 11th August, 1872, the day after it received the royal assent, recites that "it is expedient to amend the law for the sale by retail of intoxicating liquors, and the regulation of public-houses and other places in which intoxicating liquors are sold, and to make further provision in respect of the grant of new licences for the sale of intoxicating liquors, and the better prevention of drunkenness."

Preliminary.

Short title.
1b. s. 1.

This act may be cited as "The Licensing Act, 1872."

37 & 38 Vict.
c. 49, s. 1.

THE 37 & 38 Vict. c. 49, "An Act to amend the Laws relating to the Sale and Consumption of Intoxicating Liquors" amends "The Licensing Act, 1872," referred to as the principal act, and enacts that it and the principal act shall, so far as is consistent with the respective tenors of such acts, be construed as one act, and may be cited together as "The Licensing Acts, 1872-1874;" but the 37 & 38 Vict. c. 49, may, if necessary, be cited separately as "The Licensing Act, 1874."

Commence-
ment of Act.
1b. s. 2.

2. The 37 & 38 Vict. c. 49, reciting that "it is expedient to amend the Licensing Act, 1872," came into operation as to the provisions relating to hours of closing (not being provisions relating to the grant of early-closing licences) (see *post*, p. 89), and as to the provision repealing section 24 of the principal act, on the 10th of October, 1874, and not before, and as to the re-

mainder, immediately on the passing of the act, *i. e.* the 30th July, 1874. 37 & 38 Vict.
c. 43.

The Act of 1872 does not extend to Scotland, but to England and Ireland only. The portion relating to Ireland is, however, omitted from this work. Extent of
Act.
35 & 36 Vict.
c. 34, s. 2.

Repeal.

The several acts set forth in the second schedule hereto shall be repealed to the extent to which such acts are therein expressed to be repealed, and in particular there shall be repealed so much of the Wine and Beerhouse Acts as make such acts temporary in their duration (*a*), and the said acts shall henceforth be perpetual. Repeal of
Acts men-
tioned in
second
schedule.
1b. s. 75.

Provided that the repeal enacted in this act shall not affect— Proviso.

- (1.) Any security given before this act comes into operation (*b*):
- (2.) Anything duly done before this act comes into operation (*b*):
- (3.) Any right acquired or liability accrued before this act comes into operation (*b*):
- (4.) Any removal of a licence or certificate in pursuance of the second section of "Intoxicating Liquor Licensing Suspension Act, 1871" (*c*):
- (5.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this act comes into operation (*b*):
- (6.) The institution of any legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

[The proviso to this section which relates to houses licensed for billiards is given in Chap. XVI, *post*, p. 260.]

37 & 38 Vict.
c. 49.

Ib. s. 33.

By sect. 33 of the 37 & 38 Vict. c. 49, there are repealed the sections of the principal act relating to the following matters ; that is to say,

- (1.) Sections 19 to 22, both inclusive, relating to adulteration, and the first schedule to the principal act ;
- (2.) Section 24, relating to hours of closing ; and
- (3.) Section 35, relating to entry on premises by constables ; and
- (4.) So much of sections 5, 6, 13, 14, 16, 17, and 28 as relates to the records of convictions on licences, and of section 74 as contains the definition of a town for the purposes of the provisions with respect to closing and of a new licence.
- (5.) The last paragraph of section 56, beginning with the words "In a county the justices" to the end of the section.

Provided that the repeal enacted in this act shall not affect—

- (1.) Anything duly done or suffered under any enactment hereby repealed :
- (2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed :
- (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence against any enactment hereby repealed.

Ib. ss. 4, 12.

By sects. 4 and 12 of the same act, section 26, as far as it provides for granting certain exemptions to premises near theatres, and the whole of section 67, are repealed.

(a) These were 32 & 33 Vict. c. 27, s. 22, and 33 & 34 Vict.

c. 29, s. 17, also specially mentioned in the second schedule, 35 & 36 Vict. c. 94.
supra.

(b) The act, as before stated, came into operation on the 11th of August, 1872.

(c) The provisions as to removal of licences and certificates are contained in 35 & 36 Vict. c. 94, s. 50, Chap. II. Sect. 7.

By sect. 71, "The schedules to this act shall be construed and have effect as part of this act." The first schedule is of "deleterious ingredients," but is now repealed by sect. 33 of 37 & 38 Vict. c. 49. The second schedule is of the acts repealed, and may be given in an abbreviated form here, as the full title, which is the only omission, is given in the "Appendix II." of acts, showing how the acts prior to 35 & 36 Vict. c. 94, have been dealt with by it as well as other acts during the last forty-four years:—

Ib. s. 71.

Second
schedule of
acts repealed.

Session and Chapter.	Extent of Repeal.
21 James 1, c. 7..	So much as is unrepealed.
3 Geo. 4, c. 61 ..	Section 6; section 10; section 11; so much of section 13 as relates to the form of licence; sections 18 and 19; section 20; section 21; section 22; section 23; section 25; section 26; also section 27; section 28; section 29, except in so far as the three last-mentioned sections relate to the renewal of licences or to the transfer of licences under sections 4 and 14 of the same act; also section 31; section 32; section 33; section 34.
11 Geo. 4 & 1 Will. 4, c. 64.	Section 6; section 11; section 12; section 13; section 15; section 16; section 17; section 18; section 19; section 20; section 21; section 22; section 25; section 26; section 27; so much of section 30 as incorporates or applies any repealed enactment.
4 & 5 Will. 4, c. 85	Section 4; section 7; section 10; so much of section 11 as incorporates or applies any repealed enactment; section 18; section 22.
2 & 3 Vict. c. 47..	Section 41, from "and in the case of any offence" to end of section. Section 42; section 43.
3 & 4 Vict. c. 61..	Section 10; section 18; section 15; section 16; section 17; section 19; also so much of section 21 as incorporates or applies any repealed enactment.
11 & 12 Vict. c. 49	The whole act so far as it relates to England.
18 & 19 Vict. c. 118	The whole act.

35 & 36 Vict. c. 94.	Session and Chapter.	Extent of Repeal.
	23 & 24 Vict. c. 27	Section 5; section 17; section 20; section 26; section 27; section 28; section 29; section 31; also sections 18, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41 and 42, so far as such sections relate to the sale of intoxicating liquors or any offences connected therewith; also section 39; section 40.*
	23 & 24 Vict. c. 113	Section 41.
	27 & 28 Vict. c. 64	The whole act, except in so far as it relates to refreshment-houses in which intoxicating liquors are not sold.†
	28 & 29 Vict. c. 77	The whole act, except in so far as it relates to refreshment-houses in which intoxicating liquors are not sold.†
	32 & 33 Vict. c. 27	So much of section 6 as relates to the form of certificate; section 12; section 13; section 14; section 15; section 16; section 17; section 18; so much of section 19 as relates to offences; section 22.
	33 & 34 Vict. c. 29	Section 5; section 6; section 7, from "the second and third provisoes" to the end of section; section 8; section 9; section 12; section 13; section 15; section 17.
	34 & 35 Vict. c. 88	The whole act.
	By 37 & 38 Vict. c. 49, s. 27, 32 & 33 Vict. c. 27, so much of sect. 8 as incorporates or applies any repealed enactment.	

Saving Clauses.

Nothing in this act shall affect or apply to—

1. The privileges at the date of the passing of this act enjoyed by any university in England, or the respective chancellors or scholars of the same, or their successors (a):
2. The privileges at the date of the passing of this act enjoyed by the mayor or burgesses of the borough of St. Alban's in the county of Hertford, or their successors (b),—or the exemption from the obligation to take out a licence as defined by this act, or a licence from the commissioners of inland revenue, enjoyed by the

Saving of
certain
privileges,
rights, &c.
Ib. s. 72.

* These sections, 18, 30, 31 (sect. 31 is also mentioned as wholly repealed), 32, 33, 34, 35, 36, 37, 38, 41 and 42 are placed in a separate chapter, Chap. XIV.

† These acts of 27 & 28 Vict. c. 64, and 28 & 29 Vict. c. 77, appear, like the sections mentioned in the preceding note, in Chap. XIV.

company of the master, wardens, and commonalty of vintners of the city of London (c): 25 & 26 Vict.
c. 94.

3. The sale of spruce or black beer (d):
4. The sale of intoxicating liquor by proprietors of theatres in pursuance of the acts in that behalf (e):
5. The sale of intoxicating liquors in packet boats, in pursuance of the acts in that behalf (f):
6. The sale of intoxicating liquor on special occasions in pursuance of the provisions in that behalf enacted (g):
7. The sale of spirits in canteens, in pursuance of any act regulating the same (h):
8. The sale of medicated or methylated spirits (i), or spirits made up in medicine and sold by medical practitioners or chemists and druggists:
9. The sale of intoxicating liquor by wholesale (j):
10. Any penalties recoverable by or on behalf of the commissioners of inland revenue, or any laws relating to the excise.

(a) *The Universities.*—The Alehouse Acts (9 Geo. 4, c. 61, s. 36, and 5 & 6 Vict. c. 44, s. 6), the Beerhouse Acts (1 Will. 4, c. 64, s. 29, and 3 & 4 Vict. c. 61, s. 22), the Refreshment Houses Act (23 Vict. c. 27, s. 45), and the Wine and Beerhouse Act (32 & 33 Vict. c. 27, s. 20), which are unrepealed, contain a similar provision as to the Universities of Oxford and Cambridge. As to Oxford, it appears that for many years the University has neither claimed nor exercised any jurisdiction or privilege as to ale or beerhouse licences. It had jurisdiction, it is said, under a statute of James the First, and previously under a charter. Under the 17 Geo. 2, c. 40, the University has and exercises jurisdiction as to wine licences in the University and its precincts. In regard to Cambridge, it would appear from *Reg. v. Archdall* (8 Ad. & El. 281) that the authority of the University to grant alehouse licences is too remote to be traced. These privileges have been much curtailed by the Cambridge Award Act, 1856 (19 Vict. c. xvii.), and the University can now only grant wine licences, as will appear from sections 8, 9, 10, 11 and 12 of that act.

(b) *Borough of St. Alban's.*—The earliest act cited in this St. Alban's.

35 & 36 Vict.
c. 94.

work which mentions this privilege is the Refreshment Houses Act (23 Vict. c. 27, s. 45). It is also in the 32 & 33 Vict. c. 27, s. 20. The privilege referred to is to grant wine licences, or exclusive privileges to sell wine within the borough and two miles thereof, and was given to the mayor and aldermen by a charter or letters-patent of Queen Elizabeth and of King James the First for the maintenance and support of the Grammar School. These licences are, it is understood, let for a term of three years, and no person can sell wine without the consent of the lessees, and of course the inland revenue cannot interfere.

Vintners of
London.

(c) *The Vintners of London.*—This privilege is also mentioned in the same acts stated in regard to the Universities, *supra*. The Vintners Company from the time of Edw. 3 (1363) have had the privilege of dealing in wine only without licence, and especially so by a charter of James I, in 1611, when this privilege was confirmed in a case in the King's Bench on an information under an act of 12 Car. 2, c. 25 (reported Vaughan, 330, 359; Levinz, 217, 221). The privilege referred to does not extend "to those freemen of the said vintners who have obtained their freedom by redemption only" (see 30 Geo. 2, c. 19, and 32 & 33 Vict. c. 27, s. 20); and the 25 Vict. c. 22, s. 16, removes doubts which had arisen as to the extent of the privilege, and enacts, "That no freeman of the said company shall be entitled to sell wine in more than *one* separate and distinct house or premises at the same time" without the proper excise licence, nor "to exercise the said privilege unless he shall have previously made an entry of the house or premises with the proper officer of excise" as directed by 4 & 5 Will. 4, c. 51, s. 5. The Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 41 (which is repealed by 35 & 36 Vict. c. 94 in other respects), provides that the freemen who claim to be entitled to sell foreign wine by retail to be consumed on the premises within the metropolitan police district, without licence, "shall be subject to all the provisions of all acts made for the regulation of persons so licensed (except those provisions which require or refer to the taking out of a licence either from any justice of the peace, or from the commissioners of excise)." Tavern-keepers, being vintners, are exempted from having soldiers billeted upon them (see *Annual Army Mutiny Acts*).

2 & 3 Vict.
c. 47, s. 41
(as to metro-
polis).

(d) It is understood that no justices' or excise licence is required for the sale of black or spruce beer. The distinction between black beer and ordinary beer does not seem to be recognized except in 25 Vict. c. 22, s. 9, which saves brewers of black beer from the higher duties imposed by that act upon brewers' licences.

(e) The principal act is the 5 & 6 Will. 4, c. 39, s. 7, referred to in Chap. XVIII., *post*, p. 281.

(f) These acts are referred to in Chap. XVII.

(g) These provisions are in Chap. XVII.

(A) This is under the Annual Mutiny Acts referred to in Chap. XVIII., *post*, p. 277.

25 & 26 Vict.
c. 94.

(i) The acts appear to be the 24 & 25 Vict. c. 91, ss. 1—6, and 31 & 32 Vict. c. 124, s. 4.

(j) The only acts which appear to relate to the sale of intoxicating liquors by *wholesale* are the following:—

Beer.—6 Geo. 4, c. 81, s. 2, and schedule, as to brewers of beer, and retailers of beer of not less than 4½ gals. [No licence appears to be required for cider]:

Spirits.—Same act and schedule; “every dealer in spirits, not being a retailer thereof:”

Foreign Wine.—Same act and schedule, “every dealer in foreign wine,” &c.:

Sweets.—11 & 12 Vict. c. 121, s. 9; 23 & 24 Vict. c. 113, s. 7, dealers in, of 2 gals. and upwards, or one dozen quarts at one time.

A licence as defined by this act (a) shall not be required for—

Licence as defined by this act not required for certain retail sales.
Ib. s. 73.

1. The sale of wine by retail, not to be consumed on the premises, by a wine merchant in pursuance of a wine dealer's licence granted by the commissioners of inland revenue; or
2. The sale of liqueurs or spirits by retail, not to be consumed on the premises, by a wholesale spirit dealer whose premises are exclusively used for the sale of intoxicating liquors (b), in pursuance of a retail licence granted by the commissioners of inland revenue, under the provisions of the twenty-fourth and twenty-fifth of her present Majesty, chapter twenty-one, intituled “An Act for granting to her Majesty certain duties of excise and stamps” (c).

(a) The definition of “licence” is contained in sect. 74, *post*, p. 24, and note (g), p. 32, which see.

(b) Where the premises are *not* so exclusively used, as for instance the shops of grocers and others, a licence is required to be obtained from the justices under sects. 68, 69, set out in Chap. II., *post*, p. 81.

(c) The retail liqueur and spirit licence is granted under sect. 2 of the 24 & 25 Vict. c. 21; and the retail liqueur licence only under 23 & 24 Vict. c. 114, s. 169.

35 & 36 Vict.
c. 94.

Saving for
indictments,
&c. under
other acts.

Ib. s. 59.

Nothing in this act shall prevent any person from being liable to be indicted or punished under any other act, or otherwise, so that he be not punished twice for the same offence.

This seemingly refers to the penalties under the acts relating to excise and inland revenue (which are excepted by sect. 72, subs. 10, *ante*, p. 21), and others for the same description of offence or act committed or omitted by the defendant.

Definitions.

Interpreta-
tion of terms,
&c.

Ib. s. 74.

In this act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say,

"Intoxica-
ting Liquor
Licensing
Act, 1828,"
9 Geo. 4,
c. 61:

"Intoxicating Liquor Licensing Act, 1828," means the act of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled "An Act to regulate granting of licences to keepers of inns, alehouses, and victualling-houses in England," and includes the acts amending the same (*a*):

"Wine and
Beerhouse
Acts:"

Ib. s. 74.

Beerhouse
Acts:"

"

Ib.

"Intoxica-
ting Liquors
Licensing
Acts:"

Ib.

"Intoxica-
ting Liquor:"

Ib.

"Wine and Beerhouse Acts" means the Wine and Beerhouse Act, 1869, and the Wine and Beerhouse Act Amendment Act, 1870 (*b*):

"Intoxicating Liquors Licensing Acts" means the Intoxicating Liquor Licensing Act, 1828, and the Wine and Beerhouse Acts:

"Intoxicating liquor" means spirits (*c*), wine, beer, porter, cider, perry (*d*), and sweets (*e*), and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without a licence from the commissioners of inland revenue (*f*):

"Licence:"

Ib.

"Licence" means a licence for the sale of intoxicating liquors granted by justices in pursuance of

the Intoxicating Liquor Licensing Act, 1828, including a certificate of justices granted under the Wine and Beerhouse Acts, and including a licence for the sale of sweets which is hereby authorized to be granted in the same manner as if sweets were wine, and including a licence for the retail of spirits granted to a wholesale spirit dealer by the justices in pursuance of this act (g):

35 & 36 Vict.
c. 94.

Sect. 74.

“A new licence” means a licence granted at a general annual licensing meeting in respect of premises not theretofore licensed for the sale of intoxicating liquors (but see 37 & 38 Vict. c. 49, s. 32, *post*, p. 31):

“A new
licence:”
Ib.

“The renewal of a licence” means a licence granted at a general annual licensing meeting by way of renewal:

“The re-
newal of a
licence:”
Ib.

“The transfer of a licence” means a transfer made in special sessions in exercise of the power granted to justices by the fourth section of the said act of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled “An Act to regulate granting of licences to keepers of inns, alehouses, and victualling-houses in England” (h):

“The trans-
fer of a
licence:”
Ib.

“Licensed person” means a person holding a licence as defined by this act:

“Licensed
person:”
Ib.

“Licensed premises” means premises in respect of which a licence as defined by this act has been granted and is in force:

“Licensed
premises:”
Ib.

“Unlicensed premises” means premises in respect of which a licence as defined by this act has not been granted or is not in force:

“Unlicensed
premises:”
Ib.

“Owner of licensed premises” means the person for the time being entitled to receive, either on his own account or as mortgagee or other incum-

“Owner of
licensed pre-
mises:”
Ib.

35 & 36 Vict.
c. 94.

Sect. 74.

37 & 38 Vict.
c. 49, s. 29.

brancer in possession, the rack-rent of such premises: (but by the Act of 1874, any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises: provided, that when such estate or interest is vested in two or more persons jointly, one only of such persons shall be registered as representing such estate or interest.)

"Licensing
district:"
35 & 36 Vict.
c. 94, s. 74.

"Licensing district" means the area for which a general annual licensing meeting is held in pursuance of the Intoxicating Liquor Licensing Act, 1828 (i):

"Licensing
justices:"
Ib.

"Licensing justices" means the justices having jurisdiction in respect of the grant of new licences in a licensing district under the last-mentioned act as amended by this act (i):

"Licensing
officer:"
Ib.

"Licensing officer" means any officer appointed by the commissioners of inland revenue to issue or superintend the issue of licences under this act in any place:

"Sale by
retail:"
Ib.

"Sale by retail" in respect of any intoxicating liquor means the sale of that liquor in such quantities as is declared to be sale by retail by any acts relating to the sale of intoxicating liquors (j):

"County:"
Ib.

"County" does not include a county of a city or a county of a town, but means any county, riding, parts, division or liberty of a county having a separate commission of the peace and a separate court of quarter sessions:

“Borough” means a county of a city, county of a town, city, municipal borough, cinque port and its liberties (*k*), town corporate or other place in which a general annual licensing meeting is held in pursuance of the Intoxicating Liquors (Licensing) Act, 1828, exclusive of a petty sessional division of a county :

35 & 36 Vict.
c. 94.

Sect. 74.

“Borough :”

Ib.

Where a liberty of a county, as defined by this act, is not divided into petty sessional divisions (*l*), such liberty shall, so far as respects the provisions of this act with respect to the grant of new licences, stand in the same position as if it were a petty sessional division of the county in which it is geographically situate or with which it has the longest common boundary :

—as to liberties :

Ib.

“Clerk of the licensing justices” means, where the licensing district is a county or a petty sessional division of a county, the clerk of the petty sessions for such division ;—and where the licensing district is a county of a city, county of town, city, municipal borough, town corporate, or other place not a county or a petty sessional division of a county, means the clerk to the justices of such county of a city, county of a town, city, borough, town corporate, or place, or other person performing analogous duties to such clerk ;—and where there are more persons than one in any county, petty sessional division, or other place filling the office of clerk of the licensing justices as hereinbefore defined, the licensing justices shall determine by which of such persons the register of licences shall be kept (*m*) :

“Clerk of the licensing justices :”

Ib.

“Town” means any parliamentary or municipal borough, Improvement Act district, local go-

Ib.

35 & 36 Vict.
c. 94.

Sect. 74.

vernment district, or other place having a known legal boundary (*n*),—and wherever two or more of the above-mentioned places occupy portions of the same area, “town” shall be taken to mean such one of such places as is the largest in area;—and any premises situate in more than one town shall, for the purposes of this act, be deemed to be in such one of the towns as is the largest in area (but see 37 & 38 Vict. c. 49, s. 33 (4), *ante*, p. 18, which repeals this definition, as far as the provisions with respect to closing and new licences are concerned: for the new definitions see sect. 32 of the same act, *post*, p. 30):

“Local Government district:”

Ib.

“Local government district” means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Act, 1858 (21 & 22 Vict. c. 98):

“Improvement Act district:”

Ib.

“Improvement Act district” means any area for the time being subject to the jurisdiction of any commissioners, trustees or other persons intrusted by any local act, not being a Turnpike Act or Highway Act, with powers of improving, cleansing, or paving any part of such district:

“Court of summary jurisdiction:”

Ib.

“Court of summary jurisdiction” means any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate or officer, by whatever name called (*o*), to whom jurisdiction is given by the act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” in

this act referred to as the Summary Jurisdiction Act, 1848, and any acts amending the same :

25 & 26 Vict.
c. 94.

“Quarter sessions” includes general sessions:

Sect. 74.
“Quarter sessions:”

“Police district” means,—

Ib.

1. The city of London and the liberties thereof;
2. The metropolitan police district;
3. Any county, riding, part, division or liberty of a county, borough, city, town, place or union or combination of places maintaining a separate police force;—and all the police under one chief constable shall be deemed to constitute one force for the purposes of this definition:

“Police district:”
Ib.

“Police authority” means,—

“Police authority:”
Ib.

1. In the city of London and the liberties thereof, the commissioner of city police;
2. In the metropolitan police district the commissioner of police of the metropolis;
3. Elsewhere, the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in the police district in reference to which such expression occurs:

Any act or thing by this act authorized to be done by the police authority may be done by any person authorized by him in that behalf:

“Secretary of State” means one of her Majesty’s principal secretaries of state.

“Secretary of State:”
Ib.

In the Licensing Act, 1874, if not inconsistent with the context, the following expressions have the meanings hereinafter expressly assigned to them; that is to say,—

37 & 38 Vict.
c. 49.

“The metropolitan district” means the area in that behalf mentioned in the schedule to the act, namely,—

“The metropolitan district:”
37 & 38 Vict.
c. 49, s. 32.

“The city of London or the liberties thereof,

37 & 38 Vict.
c. 49, Sch.

37 & 38 Vict.
c. 49, s. 32.

* *Sic.*

"Town:"

"Populous
place:"
1b.

or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle the radius* of which is four miles from Charing Cross :

"Town" means an urban sanitary district as described for the purposes of the Public Health Act, 1872; and any collection of houses adjacent to a town as so defined shall, for the purpose of the provisions of this act with respect to the closing of premises, be deemed to be part of such town after it has been declared so to be by an order of the county licensing committee having jurisdiction in the place where such houses are situated: provided that no urban sanitary district, whether including such adjacent houses or not, shall be deemed a town, unless it contains one thousand inhabitants :

"Populous place" means any area with a population of not less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place :

At a meeting especially convened for that purpose in manner provided by any regulations in that behalf, or in default of such regulations by the clerk of the peace, as soon as may be after the passing of this act, and not later than the first day of September, one thousand eight hundred and seventy-four, the county licensing committee shall consider all the cases within their jurisdiction with respect to which it is incumbent upon them to make orders in pursuance of this section, and they shall make orders accordingly, and shall specify therein the boundaries of such towns or populous places :

The county licensing committee may adjourn any meeting held in pursuance of this section, and may also at any subsequent meeting especially convened for that purpose make with respect to any town or populous place within their jurisdiction any like order not restrictive of any order previously made :

37 & 38 Vict.
c. 49, s. 32.

Provided that as soon as may be after the publication of each census the county licensing committee shall, at a meeting to be specially convened for the purpose, revise the orders then in force within their jurisdiction, constituting areas either parts of towns or populous places, and may alter or cancel any of the said orders or may make such further orders, if any, as they shall deem necessary to give effect to the provisions of this act :

“Occasional licence” means a licence to sell beer, spirits, or wine granted in pursuance of the thirteenth section of the act passed in the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter twenty-two, and section five of the act of the twenty-seventh year of the reign of her present Majesty, chapter eighteen, and the acts amending the same in relation to the licences therein mentioned, or of any of such acts :

“Occasional
licence :”
Ib.

“A new licence” means a licence for the sale of any intoxicating liquor granted at a general annual licensing meeting in respect of premises in respect of which a similar licence has not theretofore been granted.

“A new
licence :”
Ib.

(a) The 9 Geo. 4, c. 61, has been amended directly only by 5 & 6 Vict. c. 44, given in Chap. V.; by 24 & 25 Vict. c. 75,

35 & 36 Vict.
c. 94.

s. 4, given in Chap. II.; and by 35 & 36 Vict. c. 94, and 37 & 38 Vict. c. 49, in various sections noticed throughout this work.

(b) These acts are the 32 & 33 Vict. c. 27, and 33 & 34 Vict. c. 29.

(c) "Spirits" are defined again by the Refreshment Houses Act (23 Vict. c. 27, s. 21), for the purpose of that act to be "any fermented liquor containing a greater proportion than forty per centum of proof spirit."

(d) The Beer Act (1 Will. 4, c. 64, s. 32), contains a definition of "beer," which is to "include beer, ale, and porter;" and of "cider," which is to "include cider and perry:" the 32 & 33 Vict. c. 27, s. 2, is to the same effect.

(e) "Sweets" are defined by 33 & 34 Vict. c. 29, s. 3, to be "sweets, made wines, mead, and metheglin;" but in the latter act or 32 & 33 Vict. c. 27, it is of no practical effect, as sweets are not mentioned in any section of either now in force.

(f) Now, "wine" being an intoxicating liquor, for which a licence was before this act, and now is, required from the inland revenue, grocers and other shopkeepers are within the new act. They may also take out a licence for the sale of liqueurs or spirits by retail under certain circumstances; see sects. 68, 69 in Chap. II., *post*, pp. 81, 82.

(g) "*Licence*." This definition includes all the licences and certificates which justices are empowered to grant by the statutes, as amended and extended by this act. Sects. 68, 69 relate to the licence to a wholesale spirit dealer (Chap. II. Sect. 4). The words, "which is hereby authorized to be granted in the same manner as if sweets were wine," contain the only authority for granting a licence for the sale of sweets. It should be particularly noted that the interpretation of "licence" does not, in regard to certificates of justices granted under the Wine and Beerhouse Acts, apply to all licences mentioned in them, nor extend the power of justices to the grant of certificates for refreshment-houses proper (named in 23 Vict. c. 27, s. 6), *i. e.*, night-houses or cook-shops, in which *no* beer, cider or wine is sold by retail or consumed; for the 32 & 33 Vict. c. 27, s. 4, restricts the recital in it of the 23 Vict. c. 27, and applies the recited acts only to certificates "for the sale by retail of beer, cider or wine" (see 32 & 33 Vict. c. 27, s. 4, in Chap. II. Sect. 3, *post*, p. 71). "Certificate" or "justices' certificate" would have been a better expression to use throughout instead of "licence," as in all cases a "licence" or "certificate" is but an authority *to apply for and hold an excise licence*, as in fact the Forms of Licence prescribed by the home secretary (Appendix I.) state. The traveller for a porter, ale, and spirit merchant, bound himself by a bond not to "travel for any porter, ale, or spirit merchant, as agent, collector, or otherwise," within a certain distance of the town where the merchant carried on his business. This

traveller travelled within the distance as agent and collector for a firm of brewers in the same town, who brewed and sold only beer, ale, and porter, and sold no liquor but of their own manufacture:—Held, that the brewers were not porter, ale, or spirit merchants within the meaning of the bond. *Josselyn v. Parson*, 41 L. J., Ex. 60.

35 & 36 Vict.
c. 94.

(A) 9 Geo. 4, c. 61, s. 4, is given in Chap. V., *post*, p. 107.

(i) See the provisions of 9 Geo. 4, c. 61, ss. 1 and 37, in Chap. II., *post*, pp. 50, 51; and as to boroughs, sect. 38, *post*, p. 84.

(j) "*Sale by Retail.*" The previous acts upon this definition are 4 & 5 Will. 4, c. 85, s. 19, as to *beer*, which enacts, "that every sale of any beer, or of any cider or perry, in any less quantity than four gallons and a-half, shall be deemed and taken to be a selling by retail." The Refreshment Houses Act (23 Vict. c. 27, s. 4), as to *foreign wine*, enacts, "Every sale of foreign wine in any less quantity than two gallons, or in less than one dozen reputed quart bottles, at one time, shall be deemed to be a selling by retail." As to sweets, it would appear from 23 & 24 Vict. c. 113, s. 7, as to wholesale dealers, that the same regulations as to quantity of wine retailed, will apply to sweets. There is no general definition as to selling spirits *by retail*, but a special one is in 24 & 25 Vict. c. 21, s. 2. (See Chap. II., Sect. 3.) Practically, it consists in the sale of less than two gallons of the same kind to the same person. In *Jones v. Bone*, L. R., 9 Eq. 674, it was held that the sale of wine and spirits in bottle, by a grocer, was not such a breach of a covenant not to carry on the trade of "a seller by retail of wine, beer, spirits, or spirituous liquors," as the Court of Chancery would interfere with. As to wholesale dealers, see note (a), *post*, p. 82.

(k) *Cinque ports justices.* See Chap. II. for the provisions of 9 Geo. 4, c. 61, ss. 7, 8, *post*, pp. 55, 56, and 1 Will. 4, c. 64, s. 24, as to the jurisdiction of these justices in granting licences; and their local act, 51 Geo. 3, c. 36, ss. 2, 5, 8.

(l) These petty sessional divisions are formed under the acts 9 Geo. 4, c. 43; 6 & 7 Will. 4, c. 12; and 22 & 23 Vict. c. 65. See Oke's "*Synopsis*," 11th ed., vol. i., pp. 58, 59.

(m) See sect. 36 as to the "Register of Licences," in Chap. VII., which authorizes the licensing justices to assign the keeping a part of it to any portion of the licensing district.

(n) The place having a known "legal boundary," would include a "parish," "township," "hamlet," "tithing" and "vill" within 9 Geo. 4, c. 61, s. 37; 1 Will. 4, c. 64, s. 32; and 3 & 4 Vict. c. 61; also an ecclesiastical district formed under 6 & 7 Vict. c. 37, s. 9; *Reg. v. Northowram*, 35 L. J., Q. B. 90; 7 B. & S. 110. See also *Reg. v. Local Government Board*, L. R., 8 Q. B. 227; *Reg. v. Grassmere*, 42 L. J., Q. B. 132.

(o) "*Court of summary jurisdiction.*" The "other magistrate or officer" here referred to is the lord mayor and any

35 & 36 Vict.
c. 94.

alderman of the City of London, who when sitting alone either at the Mansion House or Guildhall justice rooms have the power of two justices given them by sect. 34 of the 11 & 12 Vict. c. 43, as have the metropolitan police magistrates and stipendiary magistrates (s. 33; 2 & 3 Vict. c. 71, ss. 13, 14; 21 & 22 Vict. c. 73, ss. 1, 2). See further, Chap. XII., for sect. 51 of 35 & 36 Vict. c. 94, and the practice before magistrates under the 11 & 12 Vict. c. 43.

Other defini-
tions in other
acts.

Besides these definitions there are certain general ones applicable to all acts;—such as those in the 13 & 14 Vict. c. 21, s. 4, that the masculine gender shall include females, the singular the plural, the plural the singular, and “month” a calendar month.

Disqualifications of Justices.

Disqualifica-
tion of jus-
tices to act
under this
Act, except
in cases of
drunkenness.
1b. s. 60.

No justice shall act for any purpose under this act, or under any of the Intoxicating Liquor Licensing Acts,—except in cases where the offence charged is that of being found drunk in any highway or other public place, whether a building or not, or on any licensed premises, or of being guilty while drunk of riotous or disorderly conduct, or of being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam engine, or of being drunk when in possession of loaded fire-arms (a),—who is or is in partnership with or holds any share in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in the district or districts adjoining to that in which such justice usually acts;—and no justice shall act for any purpose under this act, or under any of the Intoxicating Liquor Acts (b), in respect of any premises in the profits to which such justice is interested, or of which he is wholly or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent.

Penalty, re-
coverable by
action.
1b.

Any justice hereby declared not to be qualified to act under this act who knowingly acts as a justice for

any of the purposes of this act shall for every such offence be liable to a penalty not exceeding one hundred pounds, to be recovered by action in one of her Majesty's Superior Courts at Westminster (c):

35 & 36 Vict.
c. 94.

Sect. 60.

Provided that—

- (1.) No justice shall be disqualified under this section to act in respect of any premises by reason of his having vested in him a legal interest only, and not a beneficial interest, in such premises or the profits thereof:
- (2.) No justice shall be liable to a penalty for more than one offence committed by him under this section before the institution of any proceedings for the recovery of such penalty (d):
- (3.) No act done by any justice disqualified by this section shall by reason only of such disqualification be invalid (d):

But acts of
disqualified
justice not
invalid.
Ib.

The previous statutory provision on the subject of this section was the 6th sect. of 9 Geo. 4, c. 61, repealed by the act in the text. It was not so general in its operation as the present enactment, as it only applied to the business of licensing and not to the adjudicating upon information for offences committed by alehouse keepers and others.

(a) This exception of cases of drunkenness is new. The offences referred to are punishable under sect. 12, Chap. XI.

(b) See the definition of "Intoxicating Liquor Licensing Acts" in sect. 74, *ante*, p. 24.

(c) The penalty hereby imposed is also contained in sect. 24 of 9 Geo. 4, c. 61, which has not been repealed as section 6 is; but apparently is inoperative now that the penalty is taken away, except as to the moiety to the informer: it enacts,—
"That every penalty and forfeiture imposed by this act upon any justice may be sued for and recovered by action of debt in any of his Majesty's Courts of Record at Westminster,—
"and one moiety of every such penalty or forfeiture shall be paid to the use of his Majesty, his heirs and successors, and the other moiety to him who shall sue for the same."

(d) These subsections, 2 and 3, contain new and important provisions—especially the latter which ought to be of general application

35 & 36 Vict.
c. 94.

Extension of
jurisdiction
of justices
over river or
water, &c.
Sect. 61.

Extension of Jurisdiction of Justices.

"For all the purposes of this act any pier, quay, jetty, mole, or work extending from any place within the jurisdiction of any licensing justices or court of summary jurisdiction into or over any part of the sea, or any part of a river within the ebb and flow of the tide, shall be deemed to be within the jurisdiction of such justices and court.

For the purpose of jurisdiction in any proceeding under this act, any river or water which runs between or forms the boundary of two or more licensing districts, or of the jurisdiction of two or more courts of summary jurisdiction, shall be deemed to be wholly within each such licensing district and the jurisdiction of each of such courts."

These enactments of course apply to the licensing, &c. of houses, and the closing of houses, as well as the recovery of penalties before justices for offences.

Stipendiary
magistrates
may act as
licensing
justices.
Ib. s. 39.

"Beyond the limits of the jurisdiction of the metropolitan police courts a metropolitan police or stipendiary magistrate may act as one of the justices empowered to grant or confirm licences so far as regards any licensing district wholly or partly within his jurisdiction."

The Metropolitan Police Courts Act, 2 & 3 Vict. c. 71, s. 14, provided that none of the police magistrates "shall be competent to act as a justice of the peace; either alone or with any other justice or justices, in anything which is to be done at a special or petty sessions of all the justices acting in the division, or by the justices of any of the [said] counties or liberties in quarter sessions assembled." As to stipendiary magistrates, the 21 & 22 Vict. c. 73, s. 3, provided that the authority given to them to act alone in certain specified cases shall not "extend to acts to be done or jurisdiction to be exercised at the general or quarter sessions of the peace, or to acts or jurisdiction expressly required (by any existing or future law) to be done or exercised at special sessions, or to any act or jurisdiction in relation to the

"grant or transfer of any licence." These enactments are so far superseded by the section 39 in the text.

35 & 36 Vict.
c. 94.

"All notices and documents required by this act to be served or sent may, unless otherwise expressly provided, be served and sent by post (*a*), and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post;—and in proving such service or sending it shall be sufficient to prove that the letter containing the notice or document was prepaid, and properly addressed.

Notices may
be served by
post.

Sect. 70.

Where any officer or other person interested in any licensed premises is entitled to receive notice of a conviction under this act (*b*), he shall supply his address to the clerk or other person required to send such notice, and any notice sent to such address shall be deemed to be duly served;—and where no notice* is supplied in pursuance of this section, all notices shall be deemed to be duly served if sent to any address which such clerk or other person in the exercise of his discretion believes to be the address of the person to whom the notice was so sent.

Officer to
supply
address
to clerk to
licensing
justices.
Ib.

* Sic. Should
be "address."

Provided that any notice of any offence required by this act to be sent to the owner of licensed premises (*c*) shall be either served personally or sent by registered letter."

Service of
notice on
owner of
licensed pre-
mises.
Ib.

This section will apply to all the notices required by this act, and the other acts named in it, the provisions of which are applied to the matters in this act,—*i. e.*, notices of application for new licences or certificates, or for transfers, or in relation to renewals or removals, which are now regulated by sects. 40 and 50 of 35 & 36 Vict. c. 94, incorporating 32 & 33 Vict. c. 27, s. 7, as amended by 33 & 34 Vict. c. 29, s. 4 (see Chap. II.),—and many of the notices required to be given to the owners of licensed premises, excepting those referred to in the proviso and note (*c*).

(*a*) The 33 & 34 Vict. c. 29, s. 4, subsect. 1, says the notice of

35 & 36 Vict. c. 94. application for a new licence *may* be served "by a registered letter" through the post.

(b) The "officer" referred to is the "licensing officer" of inland revenue, defined by sect. 74, *ante*, p. 26, and the clerk to the licensing justices (see sect. 55, subs. 5, set out in Chap. X.), and the person interested is the owner of licensed premises (see sects. 31 and 56, set out in Chap. X.).

(c) Under sects. 31 and 56, set out in Chaps. X., XIII. The "owner of licensed premises" is defined by sect. 74, p. 25, and by 37 & 38 Vict. c. 49, s. 29, p. 26.

Actions against Justices, Constables, &c.

9 Geo. 4, c. 61,
s. 30.

Actions
against jus-
tices, &c.

9 Geo. 4, c. 61, s. 30, enacts "that every action against any justice, constable, or other person for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this act, shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards;—and if any person shall be sued for any matter or thing which he shall have done in the execution of this act, he may plead the general issue, and give the special matter in evidence." The 1 Will. 4, c. 64, s. 28, is an enactment in the same words. *

See as to these actions against justices, 11 & 12 Vict. c. 44, Oke's "Synopsis," 11th ed., vol. i., pp. 38—46.

CHAPTER II.

GRANT OF NEW LICENCES AND CERTIFICATES BY
JUSTICES.35 & 36 Vict.
c. 94.

In the Introductory notes (pp. 11, 12), it is shown that there are eleven descriptions of houses or liquors for which licences are now required to be granted by the licensing justices, and these must be obtained before a licence can be taken out from the excise or commissioners of inland revenue for the sale of the liquors authorized to be dealt in by the keepers or occupiers of such houses. The enactments in this Chapter refer to all those licences, except where otherwise specially mentioned, and all of those granted must be confirmed by the confirming authority before they are valid (see 35 & 36 Vict. c. 94, s. 37, in Chap. III., p. 77, as to counties, and sect. 38 in this Chapter, p. 70, as to boroughs). It will be seen that sect. 74, *ante*, p. 24, in defining a "licence" includes a certificate, and definitions are also there given (pp. 25, 26, 27) of "a new licence," "licensing justices," "licensing district," and "clerk of the licensing justices," &c. Further, s. 32 of 37 & 38 Vict. c. 49, *ante*, p. 31, defines an "occasional licence" and a "new licence."

The licences
now grant-
able by
justices.

The application to the licensing justices for new licences is, as will be here fully explained, to be made in one mode, under the joint enactments of 35 & 36 Vict. c. 40, subs. 1, and 32 & 33 Vict. c. 27, s. 7, as amended by 33 & 34 Vict. c. 29, s. 4; and such

Application
for licences.When
granted.

35 & 36 Vict.
c. 94.

Grant of
licences.

General pro-
viso as to
certain ex-
cising excise
licences.

licences can be granted only at the general annual licensing meeting, or any adjournment thereof, as was done before the passing of the 32 & 33 Vict. c. 27, in cases of alehouse and other licences.

Subject to confirmation as before stated, the grant of licences for alehouses is in the discretion of the justices; but in the case of beerhouses and places for the sale by retail of beer, cider and wine (32 & 33 Vict. c. 27, ss. 8, 19), or liqueurs or spirits (35 & 36 Vict. c. 94, ss. 68, 69), or sweets (35 & 36 Vict. c. 94, s. 74, definition of "licence"), *not* to be consumed on the premises, a certificate or licence is not to be refused except upon certain grounds stated in 32 & 33 Vict. c. 27, s. 8. By a proviso tacked on to 35 & 36 Vict. c. 94, s. 69 (the section being given at p. 82), nothing in the act "as to the requirement of a justices' licence shall affect the sale of liqueurs or spirits or sweets under any excise licence granted *before* the passing of this act [10th August, 1872] during the continuance of such excise licence."

It will be convenient to divide this Chapter into the following sections:—

- (1) *The Qualifications of licensed Houses and Persons*, p. 41.
- (2) *Application for and grant of Alehouse Licences*, p. 50.
- (3) *Application for and grant of Certificates for the sale of Beer and Cider; for the sale of Wine in Confectioners' Shops and Eating-Houses when licensed by Excise as Refreshment-houses; for the sale of Bottled Beer by holders of Strong Beer Licences, and for the sale of Table Beer*, p. 70.
- (4) *Application for and grant of Licences for the sale of Wine by Grocers and other Shopkeepers; for the sale of Spirits and Liqueurs by licensed Dealers or Persons holding a wholesale Spirit Dealer's Licence, and of Sweets*, p. 70.

(1) *Qualifications of Houses, &c.*

41

- (5) *What Justices to grant and confirm new Licences and Certificates in Boroughs*, p. 84. 35 & 36 Vict.
c. 94.
- (6) *Six-day or Week-day, and Early-closing Licences*, p. 88.
- (7) *Removal of Licences and Certificates from one House or District to another*, p. 91.
- (8) *Register of Licences and Certificates granted, &c.*, p. 93.

(1) *The Qualifications of Licensed Houses and Persons.*

"No licence shall be granted under the Intoxicating Liquor Licensing Acts (a) to any person or in respect of any premises declared by or in pursuance of any of the Intoxicating Liquor Licensing Acts or this act to be disqualified persons (b) or disqualified premises (c) during the continuance of such disqualification. Any licence held by any person so disqualified, or attached to premises so disqualified, shall be void."

Disqualifications for licences :
Sect. 44.

Persons and premises.
Ib.

(a) These are the 9 Geo. 4, c. 61, and Wine and Beerhouse Acts, 32 & 33 Vict. c. 27, and 33 & 34 Vict. c. 29, as stated in the definition in sect. 74, *ante*, p. 24.

(b) The disqualified persons by the *earliest acts* are :— A sheriff's officer, or officer executing the legal process of any court of justice (9 Geo. 4, c. 61, s. 16);— a person not being a householder assessed to the poor-rates in the parish or place in which he shall be licensed to sell beer by retail (1 Will. 4, c. 64, s. 2); persons convicted of a third offence, &c. under 9 Geo. 4, c. 61, s. 21. or 1 Will. 4, c. 64, s. 13; persons convicted after 7th August, 1840, of felony, or of selling spirits without licence, from selling beer and cider by retail (3 & 4 Vict. c. 61, s. 7); or convicted after 14th June, 1860, of like offences, from selling wine by retail (23 Vict. c. 27, s. 22); persons making use of forged justices' certificate, from obtaining a licence for the sale of beer, cider or wine by retail (32 & 33 Vict. c. 27, s. 11); persons convicted of felony, from selling spirits by retail (33 & 34 Vict. c. 29, s. 14). The disqualified persons by *this act* are, under sect. 3, selling intoxicating liquors without licence; under sect. 15, permitting the licensed premises to be a brothel; under sect. 19, for adulterating liquors; and under sect. 30, on a third

Disqualified persons.

35 & 36 Vict.
c. 94.

Sect. 44.
Disqualified
premises.

Licences to
which ss. 45,
46 apply.

Qualification
of premises
for licences.

Sect. 45.
Those not be-
fore licensed
for beer or
wine.

Ib.

Those not be-
fore licensed
for sale of
any intoxicat-
ing liquor,
Ib.

not being a
railway re-
freshment-
room.
Ib.

conviction, the two previous having been recorded on his licence. See these sections set out in Chapters IX. and X.

(c) The instances in which *premises* have been or may be disqualified are,—on convictions under 1 & 2 Will. 4, c. 64, s. 18, or under the 35 & 36 Vict. c. 94, viz.,—sect. 19, where a licensed person is convicted of adulterating intoxicating liquor; under sect. 30, on his third conviction, the two previous convictions having been recorded on his licence; and under sect. 31, upon a fourth conviction, for any offence within five years, applicable only to persons licensed after 10th August, 1872. See sects. 30 and 31 in Chap. X.

As to the licences to which sects. 45, 46, given *infra*, apply, as much has been written upon and different views expressed of the construction of those obscurely-worded sections in regard to the qualification for licensed premises, already licensed and to be licensed, we propose, after setting out these sections, to give a construction of the whole at the close of the notes to sect. 46, *post*, p. 48.

“Premises to which at the time of the passing of this act no licence* under the acts recited in the Wine and Beerhouse Act, 1869, authorizing the sale of beer or wine *for consumption thereupon* is attached, shall not be subject to any of the provisions *now in force* prescribing a certain rent or value or rating as a qualification for receiving any such licence (a).

Premises *not* at the time of the passing of this act licensed for the sale of *any* intoxicating liquor for *consumption thereupon* (b) shall not be qualified to receive a licence authorizing such sale unless the following conditions are satisfied:

(a.) The premises, unless such premises are a railway refreshment-room, shall be of not less than the following annual value (c):

If situated within the city of London or

* *Sic.* Should it not be “a licence?”

the liberties thereof, *or* any parish or place subject to the jurisdiction of the Metropolitan Board of Works, *or* within the four mile radius from Charing Cross, *or* within the limits of a town containing a population of not less than one hundred thousand inhabitants (*d*), fifty pounds per annum ;—*or* if the licence do not authorize the sale of spirits, thirty pounds per annum :

35 & 36 Vict.
c. 91.
—
Annual value
in metropolis
or towns of
100,000 in-
habitants ;
Sect. 45.

If situated elsewhere and within the limits of a town containing a population of not less than ten thousand inhabitants (*d*), thirty pounds per annum ;—*or* if the licence do not authorize the sale of spirits, twenty pounds per annum :

or in towns
of 10,000 in-
habitants ;
Ib.

If situated elsewhere and not within any such town as above mentioned, fifteen pounds per annum ;—*or* if the licence do not authorize the sale of spirits, twelve pounds per annum :

or elsewhere.
Ib.

- (*b*.) The premises shall be, in the opinion of the licensing authority, structurally adapted to the class of licence for which a certificate is sought :—provided that no house, not licensed at the time of the passing of this act for the sale of any intoxicating liquor for consumption on the premises (*e*), shall be qualified to have a licence attached thereto, authorizing such sale, unless such house shall contain, exclusive of the rooms occupied by the inmates of such house, if the licence authorize the sale of spirits, two rooms, and if the licence do not authorize the sale of spirits

Houses to be
structurally
adapted.
Ib.
New houses
licensed for
sale for con-
sumption on
the premises,
to contain a
certain num-
ber of rooms.
Ib.

35 & 36 Vict.
c. 94.

Sect. 45.

Provisions in force on 10th August, 1872, as to rating qualification for houses for the sale of beer and cider for consumption *on or off* the premises.

one room, for the accommodation of the public."

£15.

£11.

£8.

(a) The provisions in force on the 10th August, 1872, as to the rent or value or rating for beerhouses are contained in the acts hereunder mentioned (unrepealed). The 3 & 4 Vict. c. 61, s. 1, enacts,—“that no licence to sell beer or cider by retail under the said recited acts [1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85] or this act shall be granted to any person who shall not be the real resident holder and occupier of the dwelling-house for which he shall apply to be licensed,—nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of fifteen pounds per annum at the least if situated in the cities of London or Westminster, *or* within any parish or place within the bills of mortality, *or* within any city, cinque port, town corporate, parish, or place, the population of which according to the last parliamentary census shall exceed ten thousand, *or* within one mile, to be measured by the nearest public street or path, from any polling place used at the last election for any town having the like population, and returning a member or members of parliament;—nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of eleven pounds per annum, if situated within any city, cinque port, town corporate, parish or place, the population of which according to such last parliamentary census shall exceed two thousand five hundred and shall not exceed ten thousand, *or* within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member or members of parliament;—nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of eight pounds, if situated elsewhere than as aforesaid;—and every licence granted contrary hereto shall be null and void.”

The 33 & 34 Vict. c. 111, corrected a misapprehension of the reading of this enactment, and enacted (as to houses licensed on 10th August, 1870, or renewed, sect. 2), in sect. 1, that “A dwelling-house, if situated within a township for which a separate poor-rate is or can be made, or within a hamlet for which a separate poor-rate is or can be made, shall, for the purpose of determining by reference to population, in accordance with the

"first . . . section . . . of the said act, the rating qualification . . . applicable to such house as a house for the sale of beer or cider, be deemed to be within such township or hamlet, as the case may be, and not within any larger area of which such township or hamlet forms a part."*

3 & 4 Vict. c. 61, s. 4 enacts (the part unrepealed by 32 & 33 Vict. c. 27, s. 21), that "it shall be lawful for the proper officers of excise authorized to grant licences to grant a licence to any person to retail beer or cider in a dwelling-house, which, with the premises occupied therewith, shall be of the real rent or annual value of fifteen pounds, eleven pounds, or eight pounds respectively, according to the situation thereof as aforesaid."

The 33 & 34 Vict. c. 29, s. 10, provided in respect to a beer-dealer's additional retail licence, that "a certificate for an additional licence to the holder of a strong beer dealer's licence to retail beer under the provisions of the 26 & 27 Vict. c. 33, shall not after the passing of this act (14th July, 1870), except by way of renewal from time to time of a certificate in force at the time of the passing of this act, be granted unless upon the like proof of qualification according to rating as is required in the case of licences to retail beer for consumption on the premises under the provisions of the acts recited in the principal act (32 & 33 Vict. c. 27) for permitting the general sale of beer and cider by retail in England." See also 37 & 38 Vict. c. 49, s. 31, *post*, p. 74.

35 & 36 Vict.
c. 94.

Strong beer-
dealer's
licence.

As regards refreshment-houses licensed to sell foreign wine the 23 Vict. c. 27, s. 8 (unrepealed), provides that "no licence to sell foreign wine by retail to be consumed on the premises shall be granted for any refreshment-house which, with the premises belonging thereto and occupied therewith, shall be under the rent and value of ten pounds a year,—nor for any refreshment-house situated in any city, borough, town, or place containing a population exceeding ten thousand according to the then last parliamentary census, if such refreshment-house, with the premises belonging thereto and occupied therewith, shall be under the rent and value of twenty pounds a year." The 24 & 25 Vict. c. 91, s. 9, which regulated the amount of licence duty in respect to these houses according to the rating does not alter the amount of rent or value here provided, nor does the 35 & 36 Vict. c. 94, s. 45, *ante*, pp. 42, 43.

Refreshment-
houses.

The practical effect of the enactment in sect. 46, *infra*, substituting annual value (to be ascertained by the justices under sect. 47, *infra*, note (c)) for the amount of rating required by these several provisions, is to render unnecessary a reference to the many cases decided on "rateable value," or rated "in one sum," &c., amongst others (*Jennings v. Justices of the City of*

* This seems to meet the decisions of *Preston v. Buckler* (39 L. J. (N. S.) M. C. 105; *Smith v. Redding*, 35 L. J. (N. S.) M. C. 202); but such questions will not again arise now that the "annual value" is to be the criterion, and the word "town" is defined in sect. 74, *ante*, p. 27, and re-defined by sect. 32 of the Act of 1874, *ante*, p. 30.

35 & 36 Vict. *Manchester*, 22 Law T., N. S. 412; *Garratty v. Potts*, 40
c. 94. L. J. (N. S.) M. C. 1; 23 Law T., N. S. 554).

(b) The premises here referred to includes alehouses, which before needed no value qualification, but not beer or wine houses for which licences are granted under the Wine and Beerhouse Acts, 1869, 1870. See *post*, p. 48, on the "Construction of Sections 45 and 46."

Mode of
ascertaining
"annual
value."

(c) As to the mode of ascertaining the annual value, 35 & 36 Vict. c. 94, s. 47, enacts,—“the licensing justices shall take such means as may seem to them best for ascertaining the annual value of any premises for the purposes of this act, and may, if they think fit, order a valuation to be made of such premises by a competent person appointed by them for the purpose, and may order the costs of such valuation to be paid by the applicant for a licence (which can be recovered under sect. 51, last paragraph, set out in Chap. XII.). The annual value of premises for the purposes of this act shall be the annual rent which a tenant might be reasonably expected, taking one year with another, to pay for the same, if he undertook to pay all tenant's rates and taxes, tithe commutation rent-charge (if any), and if the landlord undertook to bear the cost of the repairs and insurance and other expenses (if any) necessary to maintain the premises in a state to command the said rent, and if no licence were granted in respect thereof; but no land shall be included in such premises other than any pleasure grounds or flower or kitchen garden, yard, or curtilage usually held and occupied and used by the persons residing in and frequenting the house.”

Definition of
"annual
value."

In the Metropolis, by 32 & 33 Vict. c. 67, s. 45, the Valuation List for the time being in force shall be conclusive evidence of the gross value and the rateable value of the several hereditaments included therein, for the purposes of determining, as far as it is applicable, the value of any hereditaments included therein, for the purposes of the acts relating to the sale of exciseable liquors, at any time at which such value is required to be ascertained.

Ascertaining
population.
Ib. s. 65.

(d) As to the population, 35 & 36 Vict. c. 94, s. 65, enacts, “the population of any area for the purposes of this act shall be ascertained according to the last published census for the time being.” The definitions of “town” in sect. 74, *ante*, p. 27, and in sect. 32 of the 37 & 38 Vict. c. 49, *ante*, p. 30, remove many questions which arose on the rating qualification of premises.

Number of
rooms in
houses.

(e) This subsection (d.) applies to alehouses as well as to beer, cider and wine houses,—this being independent of the requirement as to value. See *post*, p. 48, on the “Construction of Sections 45 and 46.”

Annual value
necessary for
obtaining
grant of
licence a er

“Whereas in certain cases a licence under the Wine and Beerhouse Acts, 1869 and 1870, is not to be granted unless the house and premises in respect of

which such licence is granted, are of such rent and value or are rated to the poor-rate on a rent or annual value of such amount as is respectively in that behalf stated in the acts recited in the Wine and Beerhouse Act, 1869 (*a*); and it is expedient to substitute in such cases 'annual value' for the said rent, value or rating, and to provide for the ascertaining the annual value of such houses and premises:—be it therefore enacted that *in cases not provided for by the last preceding section (b)*—

35 & 36 Vict.
c. 94.

Wine and
Beer Acts,
Sect. 46.

In cases not
provided for
by sect. 46.

A licence under the Wine and Beerhouse Acts, 1869 and 1870, shall not be granted in respect of any premises (*c*) which are not, in the opinion of the licensing justices who grant such licence (*d*), of such annual value as is mentioned in that behalf in the acts recited by the Wine and Beerhouse Act, 1869;—and those acts shall be construed as if 'annual value' were therein substituted for 'rent,' 'value,' 'rated on a rent or annual value,' and other like expressions (*a*).

Future li-
censed pre-
mises to be of
certain
annual in-
stead of rate-
able value;
Ib. s. 46.

If at the *first* general annual licensing meeting after the passing of this act (*c*) the licensing justices are of opinion that any premises which are licensed for the sale of intoxicating liquors at the passing of this act, are not of *such annual value as authorizes the grant* of a licence for such premises (*d*), they *may* notwithstanding, *renew* such licence (*e*) upon the condition, to be expressed in the licence, that the holder thereof, before the next general annual licensing meeting, improves the premises so as to make them of sufficient annual value,—and if the holder fail to comply with such condition the licence shall not be renewed at such next general annual licensing meeting."

old licensed
premises to
be made of
sufficient
value, and
licence re-
newed con-
ditionally.
Ib.

(*a*) See these provisions set out in note (*a*) to sect. 45, pp. 44, 45, *supra*. The effect of this enactment is to substitute "annual value" for rating of premises, which is to be ascertained by the justices under sect. 47, note (*c*), *ante*, p. 46.

35 & 36 Vict.
c. 94.

(*b*) Alehouses now licensed cannot possibly be included in the section, never having previously required any rating or other qualification.

(*c*) Next held in Middlesex and Surrey and in the City of London in March, 1873, and elsewhere in August and September, 1872, and not any subsequent annual licensing meeting.

(*d*) *I. e.*, the grant for the first time of a new licence.

(*e*) See as to renewal, Chapter IV. It is discretionary with the justices to renew these wine and beer licences at the first annual meeting as here provided : If they refuse to renew, there is an appeal allowed (see Chapter VI.).

Construction of Sections 45 and 46.

Construction
of sections
45, 46.

1st. As to
beer and wine
licences.

1st. *As to Beer and Wine Licences mentioned in Sect. 3 of this Chapter, post, p. 70.*] The first paragraph of sect. 45 means that new houses,—those not licensed on the 10th August, 1872, for consumption on the premises, are not to be subjected to the old rating qualification ; but instead thereof they will come under the operation of the new annual value as laid down in the following paragraphs of that section, and to the additional requirement of the last paragraph as to the structural adaptation of the premises in order to provide sufficient room for the customers. The same regulations as to annual value will apply to houses to be licensed for consumption *off* the premises, which in the case of the sale of *wine* did not require, nor do they now, a rating qualification (23 Vict. c. 27, s. 8, *ante*, p. 45). The whole of sect. 46 is confined to the same houses, being those for which certificates were before grantable by justices under the acts referred to. If any of them *before* licensed are not (at the time of renewal) of the “annual value” required by the second paragraph of sect. 46, to be ascertained by the justices under sect. 47, they must be brought up to it in a year, and the justices may renew the licences on that condition as provided by the last paragraph of that section ;—the object of that enactment

being to bring up the old houses to the true annual value, and put an end to the local influences which may have caused worthless houses or cottages to be rated above their value. Failing to improve the houses, the licences will be lost next year. As regards *new* licences for such houses, whether for consumption *on* or *off* the premises, they must also be of the new "annual value" as required by the second paragraph of sect. 46, at the time of the "grant." The higher value in the second paragraph and subs. (a) of section 45, is not applicable to houses licensed under these acts for consumption *on* the premises (it cannot from its context apply to houses for *off* consumption), otherwise there would have been no necessity for the enactment in sect. 46 as to the "annual value" required on granting licences for such houses generally.

35 & 36 Vict.
c. 94.

2nd. *As to New Licences mentioned in Sect. 4 of this Chapter, post, p. 80.*] Premises requiring the new licences for the first time authorized to be granted by justices by the 35 & 36 Vict. c. 94, i. e., for wine, spirits, liqueurs, or sweets (sweets only being for consumption *on* as well as *off*, the others being *off* the premises), will not require any annual value qualification, although those for spirits and liqueurs are subject, as stated in sects. 68 and 69, to the same grounds of objection upon which the grant of licences for wine *not* to be consumed on the premises may be refused (one of which grounds is the qualification of the applicant "*or the house*;" see 32 & 33 Vict. c. 27, s. 8, *post*, p. 76), because the 23 Vict. c. 27, as to such wine licences did not require the rating qualification where the wine was *not* to be consumed on the premises (see 23 Vict. c. 27, s. 8, *ante*, p. 45).

2nd. As to
new licences
under 35 & 36
Vict. c. 94.

3rd. *As regards Alehouses, infra.*] This seems a simple matter. Alehouses before the 10th August,

3rd. As re-
gards ale-
houses.

O.

D

35 & 36 Vict.
c. 94.

1872, required no rating or other qualification for a licence. Houses having licences at that date must remain as they are during the existence of those licences, as section 46 does not apply to them in any way. Houses requiring *new* licences must be of the annual value prescribed by the second paragraph of sect. 45, and its sub-paragraphs.

Sect. 46 does not apply to alehouses already licensed under 9 Geo. 4, c. 61, as they must be taken to have been exempted by sect. 45 from the provisions in force as to value. Justices have no power to impose a condition that the licensed premises should, before the next general annual licensing meeting, be improved and made of the annual value of 30*l.*, or that, in default, the licence should not then be renewed. *Semble*, part of a licence cannot be quashed upon *certiorari* without quashing the whole (*Reg. v. Exeter JJ., Ex parte Mann*, L. R., 8 Q. B. 235; 27 L. T., N. S. 847; 42 L. J. (N. S.) M. C. 35).

Appeal by
owner against
justices' order
disqualifying
premises.

Appeal by Owner against Justices' Order disqualifying Premises.] See the provisions of sect. 56 in Chap. XIII., *post*, p. 225.

(2) *Application for and grant of Alehouse Licences.*

9 Geo. 4, c. 61.
Licence for
an inn, &c.

Id. s. 37.

This is as to a licence "to keep an inn, alehouse, and victualling-house, to sell exciseable liquors by retail, to be drunk or consumed on the premises;" "exciseable liquors" being defined by 9 Geo. 4, c. 61, s. 37, "to include any ale, beer or other fermented malt liquor, sweets, cider, perry, wine, or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise." An inn being defined by the same section to be "any inn, alehouse or victualling-house." In 26 & 27 Vict.

c. 41, as to the liability of innkeepers for the goods of their guests, it is different. See p. 284—286, and note (a). 9 Geo. 4, c. 61

Innkeepers take out four excise licences:—1. Beer, cider and perry; 2. Foreign spirit; 3. Foreign wine; and 4. British wine or mead, or metheglin, denominated “sweets” by the licence laws.

9 Geo. 4, c. 61, s. 1, enacts, “that in every division of every county and riding, and of every division of the county of Lincoln,—and in every hundred of every county, not being within any such division,—and in every liberty, division of every liberty, county of a city, county of a town, city, and town corporate (a) in that part of the united kingdom called England,—there shall be annually holden a special session of the justices of the peace (to be called the general annual licensing meeting), for the purpose of granting licences to persons keeping or being about to keep inns, ale-houses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified; and that such meetings shall be holden in the counties of Middlesex and Surrey within the first ten days of the month of March,—and in every other county on some day between the twentieth day of August and the fourteenth day of September inclusive;—and that it shall be lawful for the justices acting in and for such county or place assembled at such meeting, or at any adjournment thereof, and not as hereinafter disqualified from acting, to grant licences for the purposes aforesaid, to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper” (b).

General
licensing
meeting to
be held
annually.
Id. s. 1

Time of hold-
ing such
meetings in
Middlesex,
Surrey, and
every other
county.

(a) By sect. 37, the word “county,” and the words “county or place,” are severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, Definition of
terms.

9 Geo. 4, c. 61. division of a liberty, county of a city, county of a town, city, cinque port, or town corporate;—the words “division or place” to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate;—and the words “parish or place” to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor. The 24 & 25 Vict. c. 75, s. 4, in reference to the jurisdiction of borough justices, contained further definitions of certain of these words, and after reciting (*inter alia*) that doubts had arisen whether boroughs having separate commissions of the peace but not having separate courts of quarter sessions are “towns corporate” within the meaning of the 9 Geo. 4, c. 61, so as to give the justices of such borough control over the granting or withdrawing licences, and it is desirable that such doubts should be removed, declares and enacts,—“that in the construction of the last-mentioned act the words ‘town corporate,’ and the words ‘county or place,’ and the words ‘division or place,’ include every borough in England having a separate commission of the peace, although it may not have a separate court of quarter sessions;—and that the words ‘high constable,’ where used in the same act, include any constable of any such borough to whom the justices of the same borough may direct their precept or precepts under the same act;—and that all licences hitherto granted, and all transfers of licences hitherto made in pursuance of the same act, or of the act 5 & 6 Vict. c. 44, or any other act, by the justices of any such borough, are hereby declared to be valid and effectual to all intents and purposes.” The 35 & 36 Vict. c. 94, s. 74, *ante*, pp. 26, 27, contains other definitions of “county” which is *not* to include county of a city or town, &c., but the word “borough” includes such places and cinque ports, &c. in which a general annual licensing meeting has been held under 9 Geo. 4, c. 61.

Jurisdiction
of borough
justices.
24 & 25 Vict.
c. 75, s. 4.

(b) The licensing justices have merely power to grant or withhold a licence, and cannot suspend it over the time at which it is to commence according to the act; neither should they refuse to hear an application because the justices have determined not to grant any more licences (*Reg. v. Walsall*, 24 Law T. 111); nor can they by a general resolution determine not to grant or renew the licences of all such persons who shall not consent to take out an excise licence for the sale of spirits in addition to the beer licence (*Reg. v. Sylvester*, 81 L. J. (N. S.) M. C. 93; 5 Law T., N. S. 794; see also *Modlen v. Snowball*, 31 L. J. (N. S.) M. C. 87; Chan. 44). The justices having authority to grant the licences “to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper,” cannot grant a licence to a wine and spirit merchant in respect of premises which he does not occupy as an inn or hotel (*Reg. v. Wilkinson*, 10 Law T., N. S. 370), as that would appear to contravene the 24 & 25 Vict. c. 21, s. 2, applicable to such cases, nor, according to the opinion of eminent counsel, is a minor a “fit and proper

person" to be licensed under the act. See *ante*, p. 41, note (b), 9 Geo. 4, c. 61. for a reference to the acts disqualifying certain persons from holding any licence. They may also refuse to grant it where there are sufficient licensed houses already for the requirements of the district (*Reg. v. Justices of Lancashire*, 40 L. J. (N. S.) M. C. 17). It should be stated that 9 Geo. 4, c. 61, s. 17, enacts, "that no licence for the sale of any exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, shall be granted by the commissioners of excise, or by any officer of excise, to any person whatsoever, unless such person shall have previously obtained from the justices a licence under this act, and which said licence of such justices shall be retained by such person, after being produced to the commissioners or officers of excise;—and every licence granted by the commissioners of excise, or by any officer of excise, contrary to this provision, shall be null and void to all intents and purposes."

Ib. s. 17.

The grounds of refusal to grant licences in the 32 & 33 Vict. c. 27, s. 8, *post*, p. 76, have no application to alehouses, for before 35 & 36 Vict. c. 94, they needed no value or any other qualification; but in future the premises must be of the annual value and structural adaptation required by the second and following paragraphs of sect. 45, *ante*, pp. 42, 43.

Qualification
for alehouses.

By long usage the general annual licensing meeting for the city of London is held on the *second* Monday of the month of March, 9 Geo. 4, c. 61, s. 36, providing (*inter alia*) that nothing in the act shall extend "to alter the time of granting licences for keeping inns in the city of London."

In the City of
London.

In every such division or place as aforesaid there shall be holden, twenty-one days at the least before each such general annual licensing meeting, a petty session of the justices acting for such county or place, the majority of whom then present shall, by a precept under their hands, appoint the day, hour, and place upon and in which such general annual licensing meeting for such division or place shall be holden, and shall direct such precept to the high constable [read now "clerk to the licensing justices"] of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to

Time and
place, how
general
annual
licensing
meeting to be
appointed.
Ib. s. 2.

Notice of
meetings to
be given.
Ib.

9 Geo. 4, c. 61.

order the several petty constables or other peace officers within his constableness to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel on some other public and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling-house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a licence to sell exciseable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice.

32 & 33 Vict.
c. 47.

Sect. 3.

Since the passing of the High Constables Act, 1869 (32 & 33 Vict. c. 47), which practically abolishes the office of high constable, as regards the general annual licensing meeting and all special sessions of justices, the practice of giving notice of these meetings is altered, the clerk to the justices being placed in the position of the high constable by sect. 3 of that act which enacts,—“it shall be the duty of the clerk to the justices of the peace in each petty sessional division, other than those which are either wholly or partly within the metropolitan police district or the city of London,* *to send by post to the proper parties* in such division all notices of the holding of special or other sessions, of days of appeal, and of any other matter or thing (except such as relate to claims against the hundred or other like district, or to parliamentary or municipal elections, or the registration of electors) of which notices are now by law or custom served upon or sent to any parochial officer or other person by high constables,—and no precept or notice to perform any such duty in any such division shall hereafter be issued to any high constable after the passing of this act.” The practice is now for the justices to address a precept to their clerk in the same form as before usually directed to the high constable, the clerk addressing an order to the superintendent of police, with the notice to be delivered to other parties, or affixed on church doors, &c., for the words in the section “*send by post*

* The metropolitan police district, to which this enactment does not apply, is defined and limited by 10 Geo. 4, c. 44, ss. 4, 34; 2 & 3 Vict. c. 47, s. 2. It excludes the city of London, but includes the whole of Middlesex, and parts of the counties of Surrey, Hertford, Essex and Kent, within a radius of about fifteen miles from Charing Cross.

to the proper parties," cannot be applied to notices required to be affixed on the doors of churches, &c., and therefore it will be convenient still to employ the constable as before in these cases. Notices of the holding of any special sessions may be signed by any one justice and sent by post to all the other justices of the bench (7 & 8 Vict. c. 33, s. 7). The fees of the justices' clerks will not be affected by the new mode; but in some counties the superintendents of police are engaged in serving these notices by order of the quarter sessions, and then the fees are paid by the justices' clerk to the police fund. If a parish constable, appointed under the Parish Constables Act, 1872 (35 & 36 Vict. c. 92), is employed in these cases, the fees would be payable to the parish (see sect. 7).

33 & 34 Vict.
c. 47.

7 & 8 Vict.
c. 33, s. 7.

It will also be seen by 35 & 36 Vict. c. 94, s. 70, set out in Chap. I., *ante*, p. 37, that some of the notices under 9 Geo. 4, c. 61, s. 2, *supra*, may be sent *by post*, i. e., those to be sent to justices and innkeepers and those proposing to be licensed.

Vide the forms for convening general annual licensing meeting, Nos. 1, 2, 3, *post*, pp. 67, 68, 69.

As to the licensing justices in certain liberties, and in the cinque ports, there are the following enactments:—Whenever at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate (a), there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city, or town corporate, who are not disqualified, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, or town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof not as hereinbefore disqualified (b), who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licences under or of hearing complaints as to offences against this act, any law, custom, or usage to the contrary notwithstanding (c).

9 Geo. 4, c. 61.
Sect. 7.

When in liberties, &c. two justices not disqualified do not attend, the county justices may act.

(a) See present definition referred to in note (a) to sect. 1.

(b) See now 35 & 36 Vict. c. 94, s. 60, *ante*, pp. 34, 35.

(c) The 1 Will. 4, c. 64, ss. 23, 24, are similar clauses to this, and sect. 8 of 9 Geo. 4, c. 61.

9 Geo. 4, c. 61.

Powers hereby given to the justices of the county not to extend to the cinque ports.

Ib. s. 8.

Nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the putting of the provisions of this act in execution within any of the cinque ports or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns,—but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and not as hereinbefore disqualified from acting, and none other, to act within and for the same and the liberties thereof not corporate respectively as they have been accustomed, and for them or any of them (not so as last aforesaid disqualified) to act within each of the corporate members immediately belonging or subordinate to such principal cinque port or ancient town, with the justice or justices of each such corporate member (not so as last aforesaid disqualified), for the purpose of granting or transferring licences under or of hearing complaints as to offences against this act, in all such cases in which the justices of the county are hereinbefore [*i. e.*, in sect. 7] empowered or authorized to act with the justice or justices of any liberty, county of a city, county of a town, city, or town corporate.

51 Geo. 3, c. 36, ss. 2, 5, 8.

By the act “to facilitate the execution of justice within the cinque ports,” 51 Geo. 3, c. 36 (1811), the cinque ports justices are not to act in granting licences to victuallers within the towns of Hastings, Sandwich, Dover near Romsey, Hythe, Rye, Winchelsea, Pevensey, Seaford, Lydd, Folkestone, Faversham, Fordwich, Tenterden and Deal. By sect. 5, the justices of Essex are authorized to grant such licences in Brightlingsea, in that county forming part of Sandwich; and by sect. 8, the justices of Kent in Beakesbourne and Grange in that county, forming part of Hastings.

Questions respecting licences to be determined, and licences to be signed,

When (at any of the meetings aforesaid) any question touching the granting, withholding, or transferring any licence, or the fitness of the person applying for such licence, or of the house intended to be kept by

such person, shall arise, such question shall be determined by the majority of justices not disqualified, who shall be present when such question shall arise (a);—and every licence granted under the authority of this act shall be signed by the majority of the justices not disqualified who shall be present when such licence shall be granted (b).

9 Geo. 4, c. 61.

by the majority of justices at the meeting.
9 Geo. 4, c. 61, s. 2.

(a) See sect. 3, *infra*, as to adjourning meetings.

(b) This requirement, as to signing the licences, need not now be adhered to unless the justices think best, and do not adopt the permissive mode authorized by 33 & 34 Vict. c. 29, s. 4, subs. 2, *post*, p. 65, which by 35 & 36 Vict. c. 94, s. 40, subs. 3, there given, is applied to every licence, including those granted for alehouses under 9 Geo. 4, c. 61.

It shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment to such day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such licence:—Provided nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid;—and that every adjournment of the said general annual licensing meeting shall be holden within the month of March in the counties of Middlesex and Surrey, and of August or September in every other county (a).

Adjournment of general annual licensing meeting.
Ib. s. 2.

(a) Sufficient time should be allowed between the annual meeting and its adjournment for the twenty-one days' notice of the application required by 35 & 36 Vict. c. 94, s. 40, subs. 1, and 32 & 33 Vict. c. 27, s. 7, *infra*, as well as for the like length of notice under 37 & 38 Vict. c. 49, s. 6, to consider the alteration of the closing hours for licensed premises (Chap. VIII., p. 146).

The 33 & 34 Vict. c. 29, s. 11, set out p. 78, which see,

9 Geo. 4, c. 61.

Sect. 2.

Notice to be given of the adjournment of the general annual licensing meeting and special sessions.
Ib. s. 5.

appears to apply to this enactment, as the 9 Geo. 4, c. 61, is an act incorporated with it, although but partially, and enables the adjourned meeting to be adjourned in the cases there provided. In the city of London the adjourned meeting is held in the same month as that for Middlesex and Surrey.

Whenever the justices shall have ordered any such adjournment of the general annual licensing meeting, or shall have appointed such special sessions as afore-said, the day, hour, and place for holding every such adjourned meeting and every such special session shall be appointed by precept of the majority of the said justices directed to the high constable [read now "clerk of the licensing justices," *note to sect. 2, ante*, p. 54], requiring notices, similar in form to those given at the general annual licensing meeting, to be affixed on the door of the church or chapel, or on some other public and conspicuous place and to be served upon the same parties.

37 & 38 Vict.
c. 49, s. 26.

It shall not be necessary to serve copies of notices of any adjournment of a general annual licensing meeting on holders of licences or applicants for licences who are not required to attend at such adjourned annual general licensing meeting (*a*).

See note to sect. 2, *ante*, p. 54, as to the necessary precept and notices to be issued, given and served.

Vide the adapted forms for adjourned meetings, Nos. 5, 6, *post*, p. 70.

(*a*) As to attendance of the applicant at the meeting or adjournment, see p. 62, *post*.

Regulations as to application for new licences.
35 & 36 Vict.
c. 94, s. 40
(in part).

The manner of applying for the alehouse licence and the notice required are now regulated by the joint operation of 35 & 36 Vict. c. 94, s. 40, subs. 1, and 32 & 33 Vict. c. 27, s. 7, as amended by 33 & 34 Vict. c. 29, s. 4, subs. 1, the previous provision in 9 Geo. 4, c. 61, s. 10, being repealed. By the 35 & 36 Vict. c. 94, s. 40, every person intending to apply for a new licence,—or to apply for the transfer of a licence,—

shall publish notice of such application as follows: that is to say,

- (1.) In the case of a new licence, he shall cause notice thereof to be given and to be affixed and maintained in manner directed by section seven of the Wine and Beerhouse Act, 1869, and any enactment amending the same (a), and shall advertise such notice in some paper circulating in the place in which the premises to which the notice relates are situate, on some day not more than four and not less than two weeks before the proposed application, and on such day or days, if any, as may be from time to time fixed by the licensing justices (b):
- (2.) [*The subsection here omitted as to transfers is given in Chap. V., post, p. 108.*]
- (3.) [*This is given post, p. 65.*]

[32 & 33 Vict. c. 27, s. 7, incorporated.]

Justices to fix days.

Provided that, notwithstanding anything in this act contained, notices in respect of all applications for new licences to be granted at any general annual licensing meeting or adjournment thereof held between the twentieth of August and the end of September in the year 1872 shall be given as if this act had not passed. The provisions of this section as to notices shall extend to all cases where, under the Intoxicating Liquors Act, 1828, notices are required to be served in a like form to or in the same manner as notices for new licences (c).

Notices of application for licences in 1872 to be given as heretofore. 35 & 36 Vict. c. 94, s. 40.

The 32 & 33 Vict. c. 27, s. 7, referred to in the above subsect. 1, is as follows, with the amendments made by 33 & 34 Vict. c. 29, s. 4, subs. 1, and 37 & 38 Vict. c. 49, s. 22, introduced in their proper places:—“Every person intending to apply to the justices for a certificate (d) under this act shall, twenty-one days at least before he applies (e), give notice in writing of

32 & 33 Vict. c. 27. Sect. 7.

Present mode of application for all new licences.

his intention to one of the overseers of the parish, township, or place in which the house or shop in respect of which his application is to be made is situate, and to [the superintendent of the police of the district, 33 & 34 Vict. c. 29, s. 4, subs. 1],—and shall in such notice set forth his name and address, and a description of the licence or licences for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made (*f*);—and in the case of a house or shop not theretofore licensed for the sale by retail of beer, cider, or wine, such person shall also within the space of twenty-eight days before such application is made cause a like notice to be affixed and maintained between the hours of ten in the morning and five in the afternoon of two consecutive Sundays (*g*) on the door of such house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or, if there be no such church or chapel, on some other public and conspicuous place within such parish or place.”

[The last paragraph of this section as to renewals is given in Chap. IV., *post*, p. 100.]

Provisional
grant and
confirmation
of licences to
new pre-
mises
37 & 38 Vict.
c. 49, s. 22.

Any person interested in any premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices and to the confirming authority for the provisional grant and confirmation of a licence in respect of such premises; and the justices and confirming authority, if satisfied with the plans submitted to them of such house, and that if such premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a licence in respect

thereof, may make such provisional grant and order of confirmation accordingly. 37 & 38 Vict.
c. 49, s. 22.

A provisional grant and order of confirmation shall not be of any validity until it has been declared to be final by an order of the licensing justices made after such notice has been given as may be required by the justices at a general annual licensing meeting or a special sessions held for licensing purposes. Such declaration shall be made if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional licence.

A provisional grant and confirmation of a licence shall be subject to the same conditions as to the giving of notices and generally as to procedure to which such grant and confirmation would be subject if they respectively were not provisional, with this exception, that where a notice is required to be put up on a door of a house such notice may be put up in a conspicuous position on any part of the premises.

This section shall, with the necessary variations, extend to the provisional removal to any premises of an existing licence under section fifty of the principal act, *post*, p. 91.

(a) By 35 & 36 Vict. c. 94, s. 36 (set out in Chap. VII., as to the register of licences), the applicant for a new licence is to state the name of the owner of the premises in respect of which the licence is granted. That would be done either in his notice of application, Form No. 4, *post*, p. 69, or at the time of granting the licence.

(b) The days of the week for advertising might be fixed by the justices by a general order, once for all.

(c) This provision would apply to notices of adjournment, under 9 Geo. 4, c. 61, s. 5, *ante*, p. 58, and to notices of transfer days, under sect. 4, in Chap. V., *post*, p. 107.

(d) Or as can now be read, a "licence," sect. 74, *ante*, p. 25.

(e) He may give the notice for the adjourned meeting if he applies then, which he may do (*Reg. v. Justices of W. R. Yorkshire*, 39 L. J. (N. S.) M. C. 17; 21 Law T., N. S. 490); but if the

application is refused at the annual meeting, justices may decline to entertain another application at the adjourned meeting, although fresh notices have been given (*Ex parte Rushworth*, 23 Law T., N. S. 120).

(f) This notice "may be served by a registered letter through the post" (33 & 34 Vict. c. 29, s. 4, subs. 1, and see 35 & 36 Vict. c. 94, s. 70, *ante*, p. 37).

(g) The times in the Repealed Act, 9 Geo. 4, c. 61, s. 10, were "between 10 A.M. and 4 P.M., and on *three* several Sundays."

Attendance of
applicant for
new licence
at general
annual
licensing
meeting.
9 Geo. 4,
c. 61, s. 12.

The applicant for a licence should attend in person at the general annual licensing meeting or adjournment; but the 9 Geo. 4, c. 61, s. 12, enacts, "that if any person intending to apply at the general annual licensing meeting, or at any adjournment thereof, or at any special session, for any licence to be granted under the authority of this act,—or for the transfer of any such licence,—shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such meeting, it shall be lawful for the justices there assembled to grant or transfer such licence to such person so hindered from attending, and to deliver the same to any person then present who shall be duly authorized by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause." But by 35 & 36 Vict. c. 94, s. 42, subs. 1, when a person applies for the *renewal* of his licence "he need not attend in person at the general annual licensing meeting, unless he is required by the licensing justices so to attend;" but this requisition is only to be made for special cause personal to the licensee, 37 & 38 Vict. c. 49, s. 26.

Not on
renewal.
35 & 36 Vict.
c. 94, s. 42.

Opposing
grant of new
licence.
Sect. 43.

By sect. 43 of the same act, "any person who appears before the licensing justices and opposes the grant of a new licence, and no other person, may

appear and oppose the confirmation of such grant by the confirming authority in counties or boroughs.”

25 & 26 Vict.
c. 94.

Rules in pursuance of this section as to the proceedings to be adopted for confirmation of new licences, and as to costs, are to be made by the joint committee, when such committee is the confirming authority.

Sect. 43.
27 & 28 Vict.
c. 49, s. 25.

As to who is entitled to oppose the grant of a new licence, the practice in the metropolitan district, and it seems everywhere, has been to allow neighbouring publicans, and all other persons who can make out a case to do so, which proceeds, it is understood, from the supposition that the published notice of the application is intended to invite all persons who can to come forward and show cause against the grant. The opposition to the *renewal* of a licence is usually (but not invariably) confined to the police authorities.

Who entitled
to oppose the
grant.

If the justices refuse to grant a new licence (and they need not give reasons), there is now no appeal, as the 9 Geo. 4, c. 61, s. 27, is repealed in that respect; but if they grant, it will not be valid until it is confirmed under sect. 37, *post*, p. 94, Chap. III. There is an appeal against the refusal to renew or transfer licences under 9 Geo. 4, c. 61, ss. 4, 14.

No appeal
against re-
fusal to grant
a new licence.

As to the form of the alehouse licence, the 9 Geo. 4, c. 61, s. 13, enacted, “that every licence which shall be granted under the authority of this act shall be [according to the form in the schedule hereunto annexed (marked C.), and shall be (a)] in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer;—and every licence for the purposes aforesaid, which shall be granted at any other time or place [or in any other form (a)] than that hereby directed, except as herein-after excepted, shall not entitle any person to obtain an excise licence for selling exciseable liquors by retail to be drunk or consumed on the premises of the

Form of
licences.
9 Geo. 4,
c. 61, s. 13.

person licensed, and shall be utterly void to all intents and purposes."

(a) The portions between brackets [] are repealed by 35 & 36 Vict. c. 94, 2nd schedule, *ante*, p. 19; but the next following enactment provides a substitute.

One licence of justices may extend to several excise licences.

37 & 38 Vict. c. 49, s. 23.

Forms to be prescribed by secretary of state.

35 & 36 Vict. c. 94, s. 48.

Proviso for licences granted in 1872.

Separate licences of justices shall not be required in the case of separate excise licences, and a licence of justices shall comprehend a permission to the licensee to take out as many excise licences as may be specified in such licence of the justices.

The 35 & 36 Vict. c. 94, s. 48, enacts, "the following regulations shall be made with respect to licences :

- (1.) Every licence granted after the commencement of this act shall be in such form as may from time to time be prescribed by a secretary of state (b):—provided that licences granted at any general annual licensing meeting or adjournment thereof between the twentieth of August and the end of September, one thousand eight hundred and seventy-two, shall be in the forms heretofore in use, but any conditions contained in any licence so granted which are contrary to the provisions of this act shall be of no effect :

- (2.) [*This subsect. as to renewals is in Chap. IV., post, p. 103.*]

Form of excise licence may be altered.

The commissioners of inland revenue may alter the form of any licence granted by them for the sale of intoxicating liquors, in such manner as they may think expedient, for the purposes of bringing such form into conformity with the law for the time being in force."

(b) The forms of the several licences as prescribed by the secretary of state (and which the former Editor of this Work had the honour of revising at the request of the home office) are given in Appendix L, where the form as to alehouses will be pointed out.

It does not appear from the definition of a "licence" as given in sect. 74, *ante*, p. 24, that this section enables the secretary of state to prescribe the following forms required under the 35 & 36 Vict. c. 94, and other acts mentioned:—

1. Orders for alteration of closing hours made by the licensing justices under sect. 24; now under 37 & 38 Vict. c. 49, sects. 3, 6.
2. Orders of exemption from closing hours granted by the local authority under sect. 26, and 37 & 38 Vict. c. 49, s. 5.
3. Occasional licences exempting from closing hours granted by local authority under sect. 29.
4. Orders of removal of licences from one house to another by licensing justices under sect. 50, and 37 & 38 Vict. c. 49, s. 22.
5. Order for temporary licence pending appeal against conviction of licensed person under sect. 53, and 37 & 38 Vict. c. 49, s. 15.
6. Temporary permission granted at petty sessions under 5 & 6 Vict. c. 44, as amended by 35 & 36 Vict. c. 94, s. 41.

However, the forms of licences given in this work are adapted to the models of those prescribed by the secretary of state.

The authentication of licences is provided for by 9 Geo. 4, c. 61, s. 9, *ante*, p. 57, and 35 & 36 Vict. c. 94, s. 40, subs. 3, the latter incorporating 33 & 34 Vict. c. 29, s. 4, subs. 2. Both enactments are permissive, and either the mode of signing by the majority of justices under the former, or by an official seal, &c. under the latter, may be adopted. The 35 & 36 Vict. c. 94, s. 40, subs. 3, enacts:—"Any licence may be authenticated in manner in which a certificate may be authenticated in pursuance of subsection two of section four of 'The Wine and Beerhouse Act Amendment Act, 1870,' and the provisions of the said subsection shall apply accordingly." The enactment so incorporated is as follows: "Where a certificate is now required to be signed by a majority of justices (*a*), it shall be sufficient if, instead of such signature, the concurrence of such majority be signified by means of an impression from an official seal or stamp, in such form as the justices may direct, affixed in the presence of the justices in sessions assembled, and verified in the case of each certificate by the signature of their

Authentica-
tion of
licences.

35 & 36 Vict.
c. 94.
Sect. 40,
subsect. 3,
incorporates
33 & 34 Vict.
c. 29, s. 4,
subsect. 2.

33 & 34 Vict.
c. 29, s. 4,
subs. 2.

Evidence of
seal.

Forgery of
seal.

Six-day
licences.

Fees to be
paid for
licences.

9 Geo. 4,
c. 61, s. 15.

Penalty on
justices' clerk
for taking
larger fees.

clerk. Any seal purporting to be so affixed and verified shall be received in evidence without further proof;—and if any unauthorized person imitate or affix an impression of such seal on any certificate or imitation of a certificate, or knowingly use a certificate or imitation of a certificate falsely purporting to be sealed in pursuance of this section, he shall be guilty of forgery" (b).

(a) This is required by the 9 Geo. 4, c. 61, s. 9, *ante*, p. 57, and in the forms of licences (now abrogated) in that act and in the schedule to 32 & 33 Vict. c. 27.

(b) The punishment for this indictable offence, being a misdemeanor at common law, is punishable by fine or imprisonment (not exceeding two years), or both.

As to the condition to be inserted in six-day and early-closing licences, see 35 & 36 Vict. c. 94, s. 49, and 37 & 38 Vict. c. 49, s. 7, *post*, p. 88.

The fees to be paid for licences are regulated by 9 Geo. 4, c. 61, s. 15, and 35 & 36 Vict. c. 94, s. 36; the 9 Geo. 4, c. 61, s. 15, enacts: "That it shall be lawful for the clerk of the justices as well at the general annual licensing meeting as also at any special session to be holden under this act, to demand and receive from every person to whom a licence shall be granted under this act, for the trouble of such clerk, and for all expenses connected therewith, the sums following, and no more; *videlicet*, for the petty constable or other peace officer, for serving notices, and for all other services hereby required of such petty constable or other peace officer, the sum of one shilling; for the clerk of the justices, for the licence, the sum of five shillings; and for preparing the precepts to be directed to the high constable, and notices to be delivered by the petty constable, as required by this act, the sum of one shilling and sixpence (a);—and every such clerk who shall demand or receive from any person for such respective fees in his behalf any

greater sum or anything of greater value than the sum hereinbefore specified, being in the whole the sum of seven shillings and sixpence [now 8s. 6d. (a)], shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds" (b).

9 Geo. 4, c. 61.
Sect. 15.

(a) The 35 & 36 Vict. c. 94, s. 36, which provides for the registration of licences, &c., enacts (*inter alia*, the remainder of the section being in Chap. VII.), that "there shall be paid by each licensed person to the clerk in respect of such registration the sum or fee of one shilling for every licence granted or renewed."

One shilling to be taken for registration.
35 & 36 Vict. c. 94, s. 36.

(b) *Vide* recovery of this penalty in Chap. XII.

There are other matters than granting licences to be transacted at the general annual licensing meeting, which are mentioned in subsequent parts of this work, viz. :—

Other matters to be done at general annual licensing meetings.

Appointing the special session for the year for transferring licences (9 Geo. 4, c. 61, s. 4, Chap. V.):

Making orders for alteration of the closing hours of licensed premises (35 & 36 Vict. c. 94, s. 24, Chap. VIII.):

Causing the register of licences to be divided into parts, and assigning a part to any portion of the licensing district (s. 36, Chap. VII.):

Appointing the days for advertising notices of applications for new licences (s. 40, *ante*, pp. 58, 59).

FORMS.

County of } Division of
to wit. } To the clerk of the licensing justices of the said division.

(1) Precept from licensing justices to their clerk appointing general annual licensing meeting.

We, the undersigned, the majority of her Majesty's justices of the peace for the said county, acting within and for the said division, present at a petty session for the said division this day held at N. in and for the said division, do hereby require you,

Ch. 2.—Grant of New Licences and Certificates.

within five days next ensuing your receiving this precept, to order the several petty constables within the said division forthwith to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel on some other public and conspicuous place within their respective parishes, a notice in writing that the general annual licensing meeting for the said division will be held at *N.* on the day of next, at the hour of noon, for the purpose of granting and renewing licences and certificates for the following purposes:

1st, For the sale by retail in inns of intoxicating liquors under the Intoxicating Liquor Licensing Act, 1828;

2nd, For the sale by retail of beer, cider or wine, under the Wine and Beerhouse Acts, 1869, 1870;

3rd, For the sale of spirits, liqueurs and sweets by retail, pursuant to the Licensing Acts, 1872-1874;

And, 4th, for granting billiard licences;

And that such petty constables do also forthwith give the like notice to, or leave the same at the dwelling-house of, every justice of the peace acting for the said division, and to every person keeping an inn or licensed for the sale of intoxicating liquor, or who shall have given notice of his intention to keep the same within their respective parishes, or to apply for a licence for the sale of any such liquor or for a billiard licence.

Given under our hands the day of 187 .
[Justices' signatures.]

(2) Order from clerk to justices to petty constables.

Division of

County of } To the petty constables, and other peace officers of
 } the parish of in the said division and to
 } each of them.
to wit. }

By virtue of a precept to me directed from her Majesty's justices of the peace acting in and for the said division, you are hereby required forthwith to affix, or cause to be affixed, on the door of the church or chapel, and where there shall be no church or chapel on some other public and conspicuous place within your district, the notice annexed (of which copies* are herewith sent) that the general annual licensing meeting for the said division will be held at *N.* on the day of next, at the hour of noon; and that you do also forthwith give a copy of the said notice to, or leave the same at the dwelling-house of, every justice of the peace acting for the said division, and to every person keeping an inn or licensed for the sale of intoxicating liquor, or who shall have given notice of his intention to keep the same, or to apply for a licence for the sale of any such liquor or for a billiard licence.

Dated the day of 187 .
J. B., clerk of the licensing justices of the said division.

* (In No. 2.) These notices are in the form No. 3. They are usually sent with this order to the superintendent of police, who distributes them to the petty and other constables.

(2) Alehouse Licences.

69

Division of [county].
General annual licensing meeting for alehouses, beer-houses, &c.

(3) Notice of general annual licensing meeting for justices, church door, and licensed persons.

Take notice, that the general annual licensing meeting for the said division will be held at *N.* on the day of next, at the hour of noon, for the purpose of granting and renewing licences and certificates for the following purposes, viz. [*here set them out as in the form No. 1, p. 67, supra.*].*

Dated at *N.* the day of 187 .
J. B., clerk to the licensing justices.

[*Here add any directions the licensing justices have made with regard to advertising notices of applications for new licences, or notice to consider the alteration of the hours of closing houses in Chap. VIII.*]

To the overseers of the poor of the parish of and to (4) Notice of application for a new alehouse licence.†
the superintendent of police of the district of in
the division in the county of

I, A. B. [state the trade or occupation], now residing at in the parish of in the county of do hereby give notice, that [*if application is intended to be made to a special session, here state the cause of such application, say, "in consequence of, &c."*] it is my intention to apply at the general annual licensing meeting [*or at the special session*] to be holden at *N.* on the day of next, for a † licence to hold any excise licence or licences to sell by retail under the Intoxicating Liquor Licensing Act, 1828, all intoxicating liquors [*or specify any one or more*], to be consumed either on or off the house or premises thereunto belonging, situate at in the said parish, of which premises *C. D.* of is the owner or lessee [*of whom I rent them*], and which premises were lately occupied by *E. F.* as a [*or as an inn under the sign of the " "*].

[*If the applicant desires a six-day or early closing licence only, he may add here, "And it is my intention to apply to the justices to insert in such licence a condition that I shall "keep the said premises closed during the whole of Sunday", or "that I shall close the premises in respect of which such "licence is to be granted one hour earlier at night than that "at which such premises would otherwise have to be closed."*]

Given under my hand this day of 187 .
A. B.

* * The advertisement of the notice will, of course, be the same.

* (In No. 2). These notices are in the form No. 3. They are usually sent with this order to the superintendent of police, who distributes them to the petty and other constables.

† The form under the 9 Geo. 4, c. 61, s. 10, is repealed by the repeal of that section by the 35 & 36 Vict. c. 94.

‡ This is referred to in applications hereafter given for other licences.

(5) Precept, order and notice of and for an adjourned meeting.

(6) Ale-house licence.

These can be easily adapted by inserting before "general annual licensing meeting," the words "adjournment of the"

This, with other licences prescribed by the secretary of state, is set out in "Appendix I."

(3) *Application for and grant of Certificates for the sale of Beer and Cider ; for the sale of Wine in Confectioners' Shops and Eating Houses when licensed by Excise as Refreshment Houses ; for the sale of Bottled Beer by holders of Strong Beer Licences, and for the sale of Table Beer.*

Certificates before granted by justices.

Certificates for all these houses and purposes were, before the passing of 35 & 36 Vict. c. 94, authorized to be granted by justices under the Wine and Beer-house Acts, 1869, 1870 (32 & 33 Vict. c. 27, and 33 & 34 Vict. c. 29).

32 & 33 Vict. c. 27.

Recital of previous acts and the licences to which the justices' certificate should apply.

The Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), recited that "by the acts relating to the general sale of beer and cider by retail in England ; (that is to say,)

- | | | |
|--|---|--------------------|
| <p>(1) 11 Geo. 4 & 1 Will. 4, c. 64 ;
 (2) 4 & 5 Will. 4, c. 85 ;
 (3) 3 & 4 Vict. c. 61 ;
 (4) 24 & 25 Vict. c. 21,</p> | } | [by their titles.] |
|--|---|--------------------|

provision is made for the grant of licences by the excise for the sale by retail of beer and cider upon the terms and conditions therein specified."

And that by the act 26 & 27 Vict. c. 33, s. 1, "it is enacted, that any person who, after the passing of that act, has taken out an excise licence to sell strong beer in casks containing not less than four and a-half gallons, or in not less than two dozen reputed quart bottles, at one time, to be drunk or consumed elsewhere than on his premises, may take out an addi-

tional licence on payment of the excise duties therein mentioned, and that the same shall authorize such person to sell beer in any less quantity and in any other manner than as aforesaid, but not to be drunk or consumed on the premises where sold, and that such additional licence shall be granted without the production of any certificate, or the possession of any other qualification than the licence therein first mentioned:"

And that "provision is made for the grant of licences by the excise for refreshment houses and for the sale of wine by retail, and for other purposes," by the act 23 Vict. c. 27:

And that "it is expedient to make better provision with regard to the granting of the licences hereinbefore mentioned, and for regulating the houses and shops in which beer, cider, and wine are sold by retail."

The 32 & 33 Vict. c. 27, s. 4, then enacts,—“from and after the fifteenth of July, 1869, no licence or renewal of a licence *for the sale by retail of beer, cider, or wine* (a), or any of such articles, under the provisions of any of the said recited acts (b), shall (save as is in this act otherwise provided), be granted except upon the production and in pursuance of the authority of a certificate granted under this act.

Any licence granted or renewed in contravention of this enactment shall be void."

(a) This description of the certificates to be granted by the justices is more restricted than in the recital which refers to all "the licences hereinbefore mentioned" in that recital, and therefore excludes the licences to keep a refreshment house in which neither "beer, cider or wine" is sold by retail; viz., to night-houses, coffee shops and the like, mentioned in the 23 Vict. c. 27, s. 6, *infra*. The definition of "licence" in sect. 74 of 35 & 36 Vict. c. 94, *ante*, p. 24, and see note (g) thereto, p. 32, does not extend the operation of this provision to 32 & 33 Vict. c. 27, s. 4. The 23 Vict. c. 27, s. 6, is as follows:—"All houses, rooms, shops, or buildings kept open for public refreshment, resort, and

26 & 27 Vict.
c. 33, s. 1.

32 & 33 Vict.
c. 27, s. 4.

Retail
licences not
to be granted
without cer-
tificate
granted
under this
act.

Coffee-
houses, &c.

23 Vict. c. 27,
s. 6.

entertainment at any time between the hours of [ten, 24 & 25 Vict. c. 91, s. 8] of the clock at night and five of the clock of the following morning, not being licensed for the sale of beer, cider, wine, or spirits respectively, shall be deemed refreshment houses within this act, and the resident owner, tenant, or occupier thereof shall be required to take out a licence under this act to keep a refreshment house;—and every person who shall keep any house, room, shop, or building for the purpose of selling therein any victual or refreshment to be consumed on the premises where the same shall be sold (except beer, cider, wine, and spirits sold respectively under a proper licence in that behalf),—and every person who shall keep any house, room, shop, or building for the consumption therein by the public of any refreshment (except as aforesaid), although the same shall not be sold therein, may, if he shall think fit, take out a licence under this act to keep a refreshment house;—and in all proceedings and upon all occasions whatever it shall be sufficient to describe by the term refreshment house any house, room, shop, or building which in any such article as aforesaid (except as aforesaid) is sold to be consumed, or is consumed as aforesaid, without further or otherwise designating or describing the same.”

(b) This provision cannot, of course, apply to the new licences placed within the jurisdiction of justices mentioned in Sect. 4 of this Chapter, *post*, p. 80.

The licences
referred to.

The licences referred to may be shortly described in the words, as near as may be, of the acts under which their grant is provided :—

Beer-houses.

Sale of Beer.] For this it is a justices' certificate either to sell by retail beer and cider (a) to be consumed *on* or *off* the licensed premises, or both on and off. The first act, 1 Will. 4, c. 64, ss. 1, 2, did not mention whether the beer was to be consumed on or off the premises. The 4 & 5 Will. 4, c. 85, s. 1, authorized either mode, and contained new duties and, with the 1 Will. 4, c. 64, many excise regulations as to the grant of the licence.

Cider-house.

Sale of Cider and Perry.] The 1 Will. 4, c. 64, s. 30, authorized the grant of the cider and perry licence.

The holder of these licences for beer, cider, and perry was not to sell wine or spirits (1 Will. 4, c. 64,

s. 1; 4 & 5 Will. 4, c. 85, ss. 16, 20); but they may now sell wine under a licence granted under the Refreshment Houses Act (see 24 & 25 Vict. c. 91, s. 10).

(a) "Beer" is to include beer, ale and porter, and "cider" to include perry (1 Will. 4, c. 64, s. 32; 32 & 33 Vict. c. 27, s. 2).

The value qualification for these houses for the sale of beer or cider to be consumed *on* or *off* the premises will be according to 3 & 4 Vict. c. 61, s. 1, *ante*, p. 44, as amended by 35 & 36 Vict. c. 94, s. 46, see *ante*, p. 47. As to proof of qualification, see sect. 47, *ante*, p. 46.

Qualification
for houses.

For the Sale of Wine in Confectioners' Shops and Eating Houses when licensed as Refreshment Houses.] This licence is grantable under the Refreshment Houses Act, 23 Vict. c. 27, *i. e.*, to sell by retail foreign wine at a house licensed as a refreshment house, being a confectioner's shop, or a person keeping an eating house,—in both cases to be consumed on the premises (ss. 7, 8).

Confectioners'
shops and
eating
houses.

23 Vict. c. 27,
ss. 7, 8.

By sect. 7, "Every person who shall be licensed to keep a refreshment house, and shall pursue therein the trade or business of a *confectioner*, or shall keep open such house as an eating house (a), for the purpose of selling to be consumed therein, animal food or other victuals wherewith wine or other fermented liquors are usually drunk, shall be entitled (subject to the terms and conditions of this act, and not being expressly disqualified thereby,) to take out a licence to sell *foreign wine* (b) by retail in such refreshment house, to be consumed on the premises where the same shall have been sold, without producing or having any other licence or authority than as aforesaid;—and every confectioner and eating-house keeper respectively who shall have taken

23 Vict. c. 27.

Confectioners
and eating-
house keepers
entitled to
take out
licences to
sell wine to
be drunk on
the premises.

Sect. 7.

23 Vict. c. 27. out such licence to retail wine under this act, shall not
Sect. 7. be subject or liable to any penalty or forfeiture under any other act or acts by reason or on account of his selling wine by retail, or having the same in his possession in his entered premises, anything in any other act or acts to the contrary notwithstanding."

Qualification of houses. The value qualification for these houses is given in sect. 8, *ante*, p. 45.

(a) This is to include a beerhouse (24 & 25 Vict. c. 91, s. 10).

(b) This is to include the sale of sweets and made wines, mead and metheglin by retail to be consumed there (26 & 27 Vict. c. 33, s. 18); but not spirits (23 Vict. c. 27, ss. 22, 24, 25).

Sale of bottled beer by holders of strong beer licences.

26 & 27 Vict. c. 33.

Sale of Bottled Beer by holders of Strong Beer Licences.]

This is an additional licence granted under 26 & 27 Vict. c. 33, s. 1, to those who have taken out an excise licence to sell strong beer in casks and quart bottles, authorizing them "to sell beer in any less quantity and in any other manner," viz., in other than four and a-half gallon casks, or two dozen reputed quart bottles at one time, "but *not* to be drunk or consumed on the premises where sold." *Vide* the description of it also in recital to 32 & 33 Vict. c. 27, *ante*, p. 70.

Qualification of houses.

The 33 & 34 Vict. c. 29, s. 10, *ante*, p. 45, gives the qualification, &c. of these premises, and see 32 & 33 Vict. c. 27, s. 8, subs. 4, *post*, p. 76.

Additional retail licence may be granted at special sessions for licensing.

37 & 38 Vict. c. 49, s. 31.

An additional retail licence to sell beer for consumption off the premises may be granted at *any special sessions for licensing purposes* to the holder of a strong beer dealer's wholesale excise licence, in the same manner and subject to the same conditions in and subject to which it might be granted at any general annual licensing meeting.

Sale of table beer.

24 & 25 Vict. c. 21, s. 2.

Sale of Table Beer.]

This is a licence to sell by retail table beer to be consumed off the premises, and

is granted under 24 & 25 Vict. c. 21, s. 3, which provides, that "it shall be lawful for any person to take out a licence for the sale in any house or shop of table beer, at a price not exceeding the rate of one penny halfpenny the quart, and not to be drunk or consumed on the premises where sold;" and it shall not be necessary "to the obtaining of such licence that the said house or shop shall be rated to the relief of the poor to any amount."

24 & 25 Vict.
c. 21, s. 3.

No qualification
required for
houses.

As to the whole of the above described licences the 32 & 33 Vict. c. 27, s. 5, enacts:—"Certificates (*a*) under this act shall be granted by the justices assembled at the general annual licensing meeting held in pursuance of an act of the session of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled 'An Act to regulate the granting of licences to keepers of inns, ale-houses, and victualing-houses in England (*b*)'—or at some adjournment of such meeting held in pursuance of the said last-mentioned act" (*c*). [*The proviso to this section was repealed by 33 & 34 Vict. c. 29, s. 4, subs. 5.*]

Certificates
by whom to
be granted.
32 & 33 Vict.
c. 27, s. 5.

At general
annual li-
censing
meeting or
adjournment.

(*a*) "Licences" may now be read for "certificates." See definition in sect. 74, *ante*, p. 25.

(*b*) The definition of this is now the "Intoxicating Liquor Licensing Act, 1828."

(*c*) See *ante* p. 51, *et seq.*, as to the general annual licensing meeting under 9 Geo. 4, c. 61, s. 1, and *ante*, pp. 57, 58, as to the adjournment, under sect. 3.

Certain provisions of the Alehouse Act, 9 Geo. 4, c. 61, have been extended to these licences by the following enactments:—

The 32 & 33 Vict. c. 27, s. 8, enacts:—"All the provisions of the said act of the ninth year of the reign of King George the Fourth, as to the terms upon which, and the manner in which, and the persons by whom, grants of licences are to be made by the justices

Specified pro-
visions of
9 Geo. 4,
c. 61, ex-
tended to
these
licences.

32 & 33 Vict.
c. 27, s. 8.

Grants of
licences;

* Should be
"to."

32 & 33 Vict.
c. 27.

Sect. 8.

appeal
against.

Grounds on
which alone
beer and wine
licences (not
to be con-
sumed on the
premises) can
be refused.

at the said general annual licensing meeting (a), and as to appeal from any act of any justice (b), shall, so far as may be, have effect with regard to grants of certificates under this act,—subject to this qualification, that no application for a certificate under this act in respect of a licence to sell by retail *beer, cider, or wine* not to be consumed on the premises shall be refused, except upon one or more of the following grounds; viz.:—

- (1.) That the applicant has failed to produce satisfactory evidence of good character (c):
- (2.) That the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied by the person applying for a licence, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character:
- (3.) That the applicant having previously held a licence for the sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence, or from selling any of the said articles:
- (4.) That the applicant, or the house in respect of which he applies, is not duly qualified as by law is required (d):

Where an application for any such last-mentioned certificate is refused on the ground that the house in respect of which he applies is not duly qualified as by law is required, the justices shall specify in writing to the applicant the grounds of their decision."

No appeal
to quarter
sessions in
certain
cases.

36 & 37. Vict.
c. 49, s. 27.

There shall be repealed so much of section 8 of the Wine and Beerhouse Act, 1869, as incorporates or applies any repealed enactment, and no appeal shall be

had to quarter sessions from any act of any justice with respect to the grant of new certificates under the Wine and Beerhouse Acts, 1869 and 1870.

(a) See as to the general annual licensing meeting and the justices to attend thereat, *ante*, p. 51, *et seq.* Adjournments are also included; see sect. 5, *ante*, p. 75, and 9 Geo. 4, c. 61, s. 3, *ante*, pp. 57, 58.

(b) As to the appeal in the 9 Geo. 4, c. 61, s. 27, it is now only applicable to the refusal to *renew* and *transfer* licences; see Chap. VI., *post*, p. 122.

(c) See *Reg. v. Pilgrim*, 40 L. J. (N. S.) M. C. 3; 23 Law T., N. S. 410. The applicant need not now, since 35 & 36 Vict. c. 94, s. 42, subs. 2 (in Chap. IV., *post*, p. 100), give this evidence, as decided in *Ex parte Morgan*, 23 Law T., N. S. 605.

(d) This subs. 4 refers to an *applicant* disqualified as well as a *house* disqualified, under enactments prior to this enactment; and now it applies to disqualifications which have taken place since. The value qualification of premises is still required for beer or cider *not* to be consumed thereon; but it is not required for wine *not* to be consumed thereon, as 23 Vict. c. 27, s. 8, *ante*, p. 45, only applies to sales for consumption *on* the premises:

By 33 & 34 Vict. c. 29, s. 4 (*inter alia*), subs. 5:—
 “Subject to the provisions of this section (*which we have given in other parts of this Work*), all the provisions of the act of the ninth year of George the Fourth, chapter sixty-one, and acts amending the same, relating to the time for which justices’ licences are to be in force (*a*),—and relating to the fees payable for such licences (*b*),—and relating to the transfer, removal, and transmission of such licences (*c*),—and the grant of licences upon assignment, death, change of occupancy, or other contingency,—and relating to copies of such licences (*d*),—and relating to grants or transfers of such licences without the attendance of an applicant who is hindered by sickness, infirmity, or other reasonable cause (*e*),—shall have effect with regard to certificates granted or to be granted under the principal act [32 & 33 Vict. c. 27] and this act.”

Further application of 9 Geo. 4, c. 61, to licences.
 33 & 34 Vict. c. 29, s. 4, subs. 5.

—Fees;
 —Transfers, &c.;

—Attendance of applicant

(a) See 9 Geo. 4, c. 61, s. 13, *ante*, p. 63.

(b) The fees are stated upon new licences in 9 Geo. 4, c. 61, s. 15, *ante*, p. 66.

Ch. 2.—Grant of New Licences and Certificates.

(c) The transfer, &c. of licences under sections 4 and 14 of 9 Geo. 4, c. 61, is treated of in Chap. V., *post*, p. 107.

(d) The like, as to copies under 5 & 6 Vict. c. 44, as amended by 35 & 36 Vict. c. 94, s. 41, *post*, p. 116.

(e) See 9 Geo. 4, c. 61, s. 12, *ante*, p. 62.

Application
for licences.

The applications for licences will be under the 32 & 33 Vict. c. 27, s. 7, as amended by 35 & 36 Vict. c. 94, s. 40, set out *ante*, pp. 58, 59. See Form of Notice, No. 7, *post*, p. 79.

Grounds on
which wine
and beer
licences can
be refused.

See *ante*, p. 76. 32 & 33 Vict. c. 27, s. 8, for the grounds upon which beer, cider and wine licences only can be refused by the licensing justices.

Postponing
applications.
33 & 34 Vict.
c. 29, s. 11.

As to postponing applications for licences, 33 & 34 Vict. c. 29, s. 11, enacts :—"Where any applicant for the grant *or* renewal of a certificate has, through inadvertence or misadventure, failed to comply with any of the preliminary requirements of the principal act [32 & 33 Vict. c. 27] or this act, or any act incorporated therewith, the justices may, if they shall so think fit, and upon such terms as they think proper, postpone the consideration of the application to an adjourned meeting (a),—and if at such adjourned meeting the justices shall be satisfied that such terms have been complied with, they may proceed to grant or withhold such certificate as if the preliminary requirements of the principal act [32 & 33 Vict. c. 27, s. 7, *as to notice of application*, *ante*, p. 59] had been complied with."

(a) This provision appears to override the provisions of 9 Geo. 4, c. 61, s. 3, *ante*, p. 57, as to adjournments, and to extend the period for holding the adjourned meeting by empowering the justices, apparently, to adjourn an adjourned meeting with respect to the grant, &c. of licences generally, or from day to day, the applications for which have been entertained and partially heard, but the *final* determination upon which has not been made. The notices of adjournment required by 9 Geo. 4, c. 61, s. 5, would not be necessary in such cases.

Form of cer-
tificate.
33 & 34 Vict.
c. 27, s. 6.

As to the form of licence, the 32 & 33 Vict. c. 27, s. 6, enacts :—"A certificate under this act shall specify the name and address of the person thereby authorized

to receive a licence, the description of licence or licences authorized to be granted to him, and whether such licence or licences is or are to be granted for the sale of beer, cider, or wine to be consumed on or off the premises, and the situation of the house or shop in respect of which such grant is authorized. It shall be in force for one year from the date of its being granted" (a). [The portion omitted as to the form in the schedule is repealed by 35 & 36 Vict. c. 94, as sect. 48 of that act provides for the form being prescribed by the secretary of state. See that section, and 33 & 34 Vict. c. 29, s. 4, subs. 2, as to the authentication of licences, set out *ante*, pp. 64, 65. See No. 8, *infra*, as to the form of certificate.]

Form of
certificate.
33 & 34 Vict.
c. 29, s. 4.

(a) This is now, since the incorporation of 9 Geo. 4, c. 61, and 33 & 34 Vict. c. 29, s. 4, subs. 5, *ante*, p. 77, governed as to the time of beginning and ending of the period for the licence by the 9 Geo. 4, c. 61, s. 13, *ante*, p. 63.

FORMS.

[*Proceed as in the form of notice for an alehouse licence, No. 4, ante, p. 69, to the †, and then say,—*

A licence to hold one or more excise licences*

[to sell beer [*or* cider and perry] by retail, to be consumed on *or* off, *or* on and off the premises, in pursuance of the act 11 Geo. 4 & 1 Will. 4, c. 64, and acts amending the same];

[*or* to sell wine by retail to be consumed on *or* off, *or* on and off the premises, in pursuance of the act 23 Vict. c. 27, s. 7, and acts amending the same];

[*or* to sell beer by retail to be consumed off the premises, in pursuance of the acts 26 & 27 Vict. c. 33, s. 1, and 37 & 38 Vict. c. 49, s. 31];

[*or* to sell table-beer to be consumed off the premises, in pursuance of the act 24 & 25 Vict. c. 21, s. 3];

thereunto belonging, situate, &c. [*concluding as No. 4, ante, p. 69*].

N.B.—*If the applicant desires a six-day or early closing licence only for consumption on the premises, make the addition pointed out in the Form No. 4, p. 69.*

(7) Notice of
application
for a licence
for sale of
beer, cider or
wine.

* The descriptions of the licences here stated are those given in the Secretary of State's Forms of Licences referred to at p. 64.

(8) Licences
for those
purposes.

These are given in the "Appendix I." amongst the other licences prescribed by the Secretary of State.

(4) *Application for and grant of Licences for the Sale of Wine by Grocers and other Shop-keepers; for the Sale of Spirits and Liqueurs by Licensed Dealers or Persons holding a Wholesale Spirit-dealer's Licence; and of Sweets.*

Licences not
before
granted by
justices.

These licences were not before the 35 & 36 Vict. c. 94, grantable by justices; see the note (g) to the definition of "licence," *ante*, p. 32. They are not grantable under the Wine and Beerhouse Acts, 1869, 1870, and the provisions of these acts are not applicable to them, unless so provided.

No value qua-
lification for
houses here
named.

It will be seen by the note on the "Construction of sections 45 and 46" of 35 & 36 Vict. c. 94, *ante*, pp. 48, 49, that none of the houses named in this division of the chapter, whether now licensed or in future to be licensed, require the new or any annual value qualification. As to wine, see note (d), p. 77.

Sale of wine
by grocers
and other
shop-keepers.
23 Vict. c. 27,
s. 3.

Sale by Retail of Wine by Grocers and other Shop-keepers.] By the Refreshment Houses Act, 23 Vict. c. 27, s. 3,—“Every person who shall keep a shop for the sale of any goods or commodities other than foreign wine, or who shall have taken out a licence as a dealer in wine (except persons expressly disqualified by this act), shall, *without producing or having any other licence or authority* [*i.e.*, a justices' certificate], be entitled to take out a licence under this act to sell by retail (a), and in reputed quart or pint bottles only, in such shop, foreign wine *not* to be consumed on the premises where sold, anything in any former act to the contrary notwithstanding.”

By the 35 & 36 Vict. c. 94, s. 74 (*ante*, p. 24), wine being defined with other articles as "intoxicating liquor," which cannot, according to the above section, "be legally sold without a licence from the commissioners of inland revenue," a "licence," as also defined by that section, must be obtained from the justices before the excise licence can be granted.

As amended
by 35 & 36
Vict. c. 94,
s. 74.

(a) See definition of selling "by retail" in the 23 Vict. c. 27, s. 4, *ante*, p. 33, Chap. I., note (j).

Sale by Retail of Spirits and Liqueurs by Licensed Dealers, or Persons holding a Wholesale Spirit Dealer's Licence.] The 35 & 36 Vict. c. 94, s. 68, enacts,—“No person shall sell by retail liqueurs or spirits under the authority of any retail licence which such person shall have obtained as a wholesale spirit dealer from the commissioners of inland revenue (a), except in premises occupied and used *exclusively* for the sale therein of intoxicating liquor, and which premises have no communication with the premises of nor are in any way occupied by a person who is carrying on any other trade or business, unless such person shall have first obtained from the licensing justices a licence authorizing such sale in premises not exclusively so occupied and used” (b).

35 & 36 Vict.
c. 94.

Sale of
liqueurs or
spirits by per-
sons holding
a wholesale
spirit dealer's
licence.

Regulations
as to retail
licences of
wholesale
spirit dealers.
Sect. 68.

Sect. 69. “A licence for the sale of liqueurs or spirits by retail not to be consumed on the premises may, where such licence is required by this act [*i. e.* under the preceding section 68], be granted in the same manner in all respects in which a licence for selling wine not to be consumed on the premises may by law be granted (c),—and an application for such a licence shall not be refused except upon one or more of the grounds on which a certificate in respect of a licence to sell by retail beer, cider, or wine not to be con-

Licences for
sale of
liqueurs, &c.
by retail not
to be con-
sumed on the
premises.
Sect. 69.

Seven days' notice of application only required in 1872.

35 & 36 Vict. c. 94, s. 69.

sumed on the premises may be refused (d):—provided that in respect of any such licence for liqueurs *or* spirits to be granted at any general annual licensing meeting, or adjournment thereof, held between the twentieth of August and the end of September in the year 1872; such notices only shall be required to be given, not exceeding seven days' notice as may be prescribed by the licensing justices.

Provide as to excise licences granted before 10th August, 1872.

Provided also, that nothing in this act contained as to the requirement of a justices' licence shall affect the sale of liqueurs or spirits *or sweets* under any excise licence granted before the passing of this act during the continuance of such excise licence" (e).

24 & 25 Vict. c. 21, s. 2.

(a) The retail licence mentioned in sect. 68 obtained by a wholesale spirit dealer is an excise retail spirit licence granted to such dealer (already licensed as such by the excise under the act 23 & 24 Vict. c. 114, and thereby authorized to sell in any quantities at one time) under 24 & 25 Vict. c. 21, s. 2, which provides, that "any person duly licensed as a dealer in spirits may take out an additional licence authorizing him to sell by retail foreign or British spirits in any quantity not less than one reputed quart bottle, or, as to foreign liqueurs, in the bottles in which the same may have been imported, *not* to be drunk or consumed upon the premises," which will enable a licensed dealer to "send out or deliver any such spirits without the certificate [the permit] required by law in such cases, if the quantity *does* not exceed one gallon at a time, and such spirits are not sent to the stock of any dealer or retailer;" provided that nothing in this section is to repeal, alter or affect sect. 169 of 23 & 24 Vict. c. 114, which authorizes a licensed spirit dealer to take out an additional licence to sell *foreign liqueurs* in bottles and to send them out as provided by the 24 & 25 Vict. c. 21, s. 2, as to spirits. A "dealer," as distinguished from a "retailer," is a person not allowed to sell a less quantity at one time than two gallons, not to be consumed at the place of sale. A *wholesale* dealer is the same person, the word "wholesale" being now added to illustrate the word "dealer" so used in the revenue laws. It will be observed that the 24 & 25 Vict. c. 21, s. 2, includes liqueurs as well as spirits; and, therefore, a wholesale spirit dealer who does not wish to sell every kind of spirit by retail, but only liqueurs, can take out a licence for that purpose under 23 & 24 Vict. c. 114, s. 169, merely. Grocers almost, if not quite exclusively, have, from the peculiar affinity of their business to them, previous to the 35 & 36 Vict. c. 94, taken out their retail spirit licence from the excise under the act of 24 & 25 Vict.

c. 21, s. 2, and their liqueur licence under 11 & 12 Vict. c. 121, s. 9, and 23 & 24 Vict. c. 114, s. 169; for before the new act the law did not notice whether any other trade or business was carried on on the premises in connection with the sale of spirits or liqueurs or not; the object of the new act being, as it appears, to prevent the surreptitious sale of intoxicating liquors at grocers and other shops under the names of other articles. See also note (j), *ante*, p. 33, as to "sale by retail."

11 & 12 Vict.
c. 121, s. 9;
23 & 24 Vict.
c. 114, s. 169.

(b) That is, as a shop for the sale of other goods, &c. If the premises are exclusively used as herein stated, then no licence is required from justices. See section 73, suba. 2, *ante*, p. 23.

(c) See *ante*, p. 80; but in 1872 seven days' notice only was necessary by the first proviso to this section.

(d) See the grounds set out in 32 & 33 Vict. c. 27, s. 8, *ante*, p. 76, and note (d) thereto. As to the qualification, see observations at commencement of this division of this chapter.

(e) The premises licensed by the excise before the 10th August, 1872, for the sale by retail of liqueurs, spirits or sweets, will not, therefore, during the existence of their present excise licences, require a justices' licence. The excise licences expire annually on the 6th July. See 37 & 38 Vict. c. 49, s. 23, *ante*, p. 64.

Sale of Sweets.] The excise licence for the sale of sweets or British wines by retail *on* or *off* the premises is granted under the 6 Geo. 4, c. 81, and by the justices pursuant to the 35 & 36 Vict. c. 94, s. 74 (see its definition of "licence," *ante*, p. 24, and see note (g) thereto, p. 32), which provides that it shall include "a licence for the sale of sweets (a), which is hereby authorized to be granted in the same manner as if "sweets were wine" (b).

Sale of
sweets.
6 Geo. 4,
c. 81, and
35 & 36 Vict.
c. 94, s. 74.

(a) The 33 & 34 Vict. c. 29, s. 3, defines "sweets" as including "sweets, made wines, mead and metheglin." The wholesale dealer's licence for sweets is taken out under 23 & 24 Vict. c. 113, s. 7.

33 & 34 Vict.
c. 29, s. 3.

(b) The provisions, therefore, of the 32 & 33 Vict. c. 27, 33 & 34 Vict. c. 29 (including the incorporated provisions of the 9 Geo. 4, c. 61), and 35 & 36 Vict. c. 94, set out in Sect. 3 of this Chapter, *ante*, p. 70, as to the notice of application for a new licence for wine, will now apply to the retail licence for sweets; but no value qualification is required for the premises if they are not already licensed for the sale of other liquors. By the proviso to 35 & 36 Vict. c. 94, s. 69, *ante*, p. 82, a justices' licence is not necessary for the sale of sweets under existing excise licences. The sale of sweets to be licensed hereafter will also be included

35 & 36 Vict.
c. 94, s. 69
(proviso).

under a wine licence granted to refreshment-house keepers, who are confectioners, or eating-house keepers selling foreign wine (26 & 27 Vict. c. 83, s. 18).

FORMS.

(9) Notice of application for licences for sale of wine (off), spirits, liquours or sweets.

[*Proceed as in the form of notice for an alehouse licence, No. 4, ante, p. 69, to the †, and then say,—*

A licence to hold one or more excise licences*

[to sell wine by retail, to be consumed off the premises, in pursuance of the act 23 Vict. c. 27, s. 8, and acts amending the same];

[or to sell spirits, to be consumed off the premises, in pursuance of the act 24 & 25 Vict. c. 21, s. 2];

[or to sell liquours, to be consumed off the premises, in pursuance of the acts 11 & 12 Vict. c. 121, and 23 & 24 Vict. c. 114];

[or to sell sweets, to be consumed either on or off the premises, in pursuance of the act 6 Geo. 4, c. 81], thereunto belonging, situate, &c. [*concluding as No. 4, ante, p. 69. If for a six-day or early closing licence in the case of sweets for consumption on the premises, add thereto as there pointed out.*]

(10) Licences for those purposes.

These forms are given with the others in "Appendix I."

(5) *What Justices to grant and confirm New Licences and Certificates in Boroughs.*

35 & 36 Vict. c. 94.

Licensing committee of justices in boroughs where there are ten justices. Sect. 38.

The 35 & 36 Vict. c. 94, s. 38, enacts,—

"In boroughs (a) in which at the commencement of the time appointed for the annual appointment of a licensing committee in this section mentioned there are ten justices acting in and for such borough or upwards, new licences shall be granted by a committee, who shall for the purpose of such new licences perform all the duties and be subject to the obligations of licensing justices (b).

* The descriptions of the licences here stated are those given in the Secretary of State's Forms of Licences referred to at p. 64.

In every such borough as aforesaid the justices acting in and for such borough shall annually in the fortnight preceding the commencement of the period during which the general annual licensing meeting for such borough may be held appoint from among themselves for the purposes of this act a committee of not less than three nor more than seven in number, but no justice shall be appointed a member of such committee unless he is qualified to act under this act (c).

35 & 36 Vict.
c. 94.

Sect. 38.
—Borough justices to appoint such committee.
Ib.

Where from any reason there are not for the time being three qualified borough justices to form the quota of a joint committee for such borough, in pursuance of section thirty-eight of the principal act, the deficiency in number of such borough justices shall be supplied by qualified county justices to be appointed by the county licensing committee.

Supply of deficiency in quota of borough justices on joint committee.
37 & 38 Vict.
c. 49, s. 21.

Any vacancies arising in such committee (in this act referred to as the borough licensing committee) from death, resignation, or other causes, may be from time to time filled up by the justices by whom the committee is appointed.

—Vacancies how filled up.
35 & 36 Vict.
c. 94, s. 33.

The quorum of a borough licensing committee shall be three members.

—Quorum.

The members of the borough licensing committee retiring at the end of the year may be re-appointed; —and if from any cause members have not been appointed in any year to succeed the retiring members, such retiring members may continue to act as the borough licensing committee until their successors are appointed.

—Re-appointment of members the second year, &c.

The grant of a new licence by a borough licensing committee shall not be valid unless it is confirmed by the whole body of borough justices, who would, if this act had not passed, have been authorized to grant licences, or by a majority of such body present at any

Licences confirmed by whole body of borough justices.

35 & 36 Vict.
c. 94.

Sect. 28.

Boroughs not
having ten
justices.

—Justices
generally to
grant licences,
and con-
firmed by
joint com-
mittee of six
justices, three
of the county
and three of
the borough.

—Quorum
and chair-
man.

meeting assembled for the purpose of confirming such licences.

As to the provisional grant and confirmation of licences to new premises, see 37 & 38 Vict. c. 49, s. 22, *ante*, pp. 60, 61.

In boroughs in which there are not ten justices acting in and for such borough at such time as aforesaid, new licences shall be granted by the qualified borough justices, but the grant of a new licence by such justices shall not be valid unless it is confirmed by a joint committee appointed in respect of such borough in manner hereinafter mentioned :

A joint committee for any such borough as last aforesaid shall consist of three justices of the county in which such borough is situate and three justices of the borough, but no justice shall be appointed a member of such committee unless he is qualified to act under this act(c). The three county justices on a joint committee shall be appointed by the county licensing committee. The same county justices may be appointed members of more than one joint committee under this section. The borough justices on a joint committee shall be appointed by the justices of the borough for which they act, or by the majority of such justices assembled at any meeting held for that purpose. Any casual vacancy arising in the joint committee from death, resignation, or other cause, may from time to time be filled up by the justices by whom the person creating such vacancy was appointed. The quorum of the joint committee shall be five members. The senior magistrate on the joint committee present at any meeting shall be its chairman ; and in the

event of an equal division of the committee the chairman shall have a second vote :

provided that so far as respects any new licences to be granted in any borough at any general annual licensing meeting, or any adjournment thereof, held between the twentieth of August and the end of September in the year 1872, the following enactments shall take effect :

35 & 36 Vict.
c. 94.

Sect. 38.
Proviso as to
all boroughs
in respect to
licences
granted in
1872.

1. If no licensing committee has been appointed in the county in which a borough is situate for which a joint committee is required to be appointed by this act, the county members of the joint committee shall be appointed by the justices in quarter sessions assembled, and in any such borough as last aforesaid any new licence, if confirmed by the joint committee, shall be in force from the date of the confirmation thereof until the eleventh day of October, 1873 :

— Where no
licensing
committee
appointed.

2. All notices and ministerial acts given or done in relation to the grant of such licences shall be valid, notwithstanding such notices may be given or acts be done before the appointment of a borough licensing committee, and the borough justices may appoint a time at which the borough licensing committee will be prepared to grant new licences.

— Notices,
&c. valid
although
given before
appointment
of committee.

No objection shall be made to any licences granted or confirmed in pursuance of this section on the ground that the justices or committee of justices who granted or confirmed the same were not qualified to make such grant or confirmation.

— Licences
valid.

From and after the passing of this act, the justices of a county shall not for licensing purposes, save in so far as respects the power of appointing members of a joint committee, have any jurisdiction in a borough

County
justices not
to act in
licensing
where
borough
justices have

35 & 36 Vict.
c. 94.

Sect. 38.

concurrent
jurisdiction.

in which the borough justices have for such purposes concurrent jurisdiction."

(a) For the definition of "borough," see sect. 74, *ante*, p. 27, and note (k) thereto.

(b) Of course the committee must act at the same period as other licensing justices, although the committee *must* be appointed before as provided in the next paragraph.

(c) See the definition of "licensing justices" and their disqualifications, in Chap. I., *ante*, pp. 26, 34, 35; and their qualifications, in 9 Geo. 4, c. 61, ss. 1, 7, 8, *ante*, pp. 51, 55, 56.

(6) *Six-day
or week-day
licences.*

Provisions as
to insertion
of condition
as to closing
of premises,
where in-
toxicating
liquors are
consumed, on
Sunday.
Sect. 49.

(6) *Six-day or Week-day Licences and Early Closing Licences.*

The 35 & 36 Vict. c. 94, s. 49, enacts,—“Where on the occasion of an application for a new licence *or* transfer *or* renewal of a licence which authorizes the sale of any intoxicating liquor for consumption on the premises (a), the applicant, at the time of his application, applies to the licensing justices to insert in his licence a condition that he shall keep the premises in respect of which such licence is or is to be granted closed during the whole of Sunday, the justices shall insert the said condition in such licence (b).

The holder of a licence in which such condition is inserted (in this act referred to as a six-day licence) shall keep his premises closed during the whole of Sunday,—and the provisions of this act with respect to the closing of licensed premises during certain hours on Sunday (c) shall apply to the premises in respect of which a six-day licence is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only.

The holder of a six-day licence may obtain from the commissioners of inland revenue any licence granted by such commissioners, which he is entitled to obtain

—Holder of
licence to
keep his pre-
mises closed
during whole
of Sunday.

in pursuance of such six-day licence, upon payment of six seventh parts of the duty which would otherwise be payable by him for a similar licence not limited to six days (see also 37 & 38 Vict. c. 49, s. 8, *infra*, as to an early-closing licence); and if he sell any intoxicating liquor on Sunday he shall be deemed to be selling intoxicating liquor without a licence (*d*).

35 & 36 Vict.
c. 94.
Sect. 49.

The notice which a licensed person is required to keep painted or fixed on his premises shall, in the case of a licence under this section, contain words indicating that such licence is for six days only (*e*).

In calculating the amount [of duty] to be paid for a six-day licence any fraction of a penny shall be disregarded."

(a) This section will apply to ale-houses and beer-houses, persons selling cider, refreshment-house keepers (being confectioners, or eating-house keepers, selling wine), and persons selling sweets respectively, to be consumed on the premises.

(b) *Vide* the addition to be made to licences as prescribed by the Secretary of State under sect. 48 (*ante*, p. 64), in "Appendix I."

(c) See the provisions of sect. 3 of 37 & 38 Vict. c. 49 of the act as to closing on Sundays, in Chap. VIII., *post*, p. 134.

(d) The penalty under this act for selling without a licence is mentioned in sect. 3, in Chap. IX., *post*, p. 155.

(e) The provisions as to affixing this notice on the outside of the licensed premises are contained in sect. 11, in Chap. IX., *post*, p. 161.

Where, on the occasion of any application for a new licence, or the removal or renewal of a licence which authorizes the sale of any intoxicating liquor for consumption on the premises, the applicant applies to the licensing justices to insert in his licence a condition that he shall close the premises in respect of which such licence is or is to be granted one hour earlier at night than that at which such premises would other-

Early-closing
licences.
37 & 38 Vict.
c. 49, s. 7.

37 & 38 Vict. c. 49. wise have to be closed, the justices shall insert the said condition in such licence.

Sect. 7. The holder of a licence in which such condition is inserted (in this act referred to as an early-closing licence) shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this act, and the provisions of this act and the principal act shall apply to the premises as if such earlier hour were the hour at which the premises are required to be closed.

1b. The holder of an early-closing licence may obtain from the commissioners of inland revenue any licence granted by such commissioners which he is entitled to obtain in pursuance of such early-closing licence, upon payment of a sum representing six sevenths of the duty which would otherwise be payable by him for a similar licence not limited to such early closing as aforesaid. In calculating the six sevenths fractions of a penny shall be disregarded.

1b. The notice which a licensed person is required by section eleven of the principal act (see *post*, p. 161) to keep painted or fixed on his premises shall, in the case of an early-closing licence, contain such words as the licensing justices may order for giving notice to the public that an early-closing licence has been granted in respect of such premises.

Remission of duty in case of six-day and early-closing licence.
1b. s. 8. A person who takes out a licence containing conditions rendering such licence a six-day licence, as well as an early-closing licence, shall be entitled to a remission of two sevenths of the duty.

(7) *Removal of Licences and Certificates from one House or District to another.*

35 & 36 Vict.
c. 94.

The 35 & 36 Vict. c. 94, s. 50 (which is a re-enactment of the repealed 34 & 35 Vict. c. 88, s. 2), enacts,—“Licences may be removed from one part of a licensing district to another part of the same district,—or from one licensing district to another licensing district within the same county,—in manner following :

Licences may be removed from one part of a district to another.
Sect. 50.

The application for an order sanctioning removal shall be made by the person desiring to be the holder of the licence when removed, and shall be made at a general annual licensing meeting, or any adjournment thereof (*a*), to the justices authorized to grant new licences in the licensing district in which the premises are situated to which the licence is to be removed.

—Application by holder of licence.

Notice of the intended application shall be given in the same manner as notice is given of an application for the grant of a new licence (*b*).

—Notice of application.

A copy of the notice shall be personally served upon or sent by registered letter to the owner of the premises (*c*) from which the licence is to be removed, and the holder of the licence, unless he is also the applicant.

—Notice to owner of premises.

The justices to whom the application is made shall not make an order sanctioning such removal unless they are satisfied that no objection to such removal is made by the owner of the premises to which the licence is attached, or by the holder of the licence, or by any other person whom such justices shall determine to have a right to object to the removal (*d*).

—Justices to make order if no objection made by owner, &c.

Subject as aforesaid, such justices shall have the same power to make an order sanctioning such re-

—Which order is to be confirmed as

35 & 36 Vict.
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Sect. 50.
grant of new
licences.

removal as they have to grant new licences;—but no such order shall be valid unless confirmed by the confirming authority of the licensing district" (e).

(a) The order, therefore, cannot be made at a special sessions under 9 Geo. 4, c. 61, ss. 4, 14, in Chap. V., *post*, pp. 107, 109.

(b) *Vide* Form of Notice, No. 11, *infra*. It must be given as required by 32 & 33 Vict. c. 27, s. 7, as amended by 35 & 36 Vict. c. 94, s. 40, set out *ante*, pp. 58, 59.

(c) *Vide* sect. 74, *ante*, p. 25, for definition of "owner of licensed premises."

(d) *Vide* Form of Order sanctioning removal, No. 12, p. 93. *Vide ante*, pp. 62, 63, as to who is entitled to oppose the grant of a new licence; but in this case the justices are to determine the point.

(e) The confirming authority in boroughs will be the justices named in sect. 38, *ante*, pp. 84, 85; in counties, under sect. 37, in Chap. III., *post*, pp. 94, 95.

No appeal.

There is no appeal against the justices' decision refusing to grant the removal, the matter being on the same footing as a new licence.

As to the provisional grant and confirmation of licences to new premises, see 37 & 38 Vict. c. 49, s. 22, *post*, pp. 97, 98, the provisions of which section, with the necessary variations, extend to the provisional removal to any premises of an existing licence under s. 50 of the Act of 1872.

FORMS.

(11) Notice
of application
for an order
to remove
licence to
another
house.

[*Proceed as in form of notice of application for a new licence, No. 4, ante, p. 69, to the asterisk,* and then insert:—* for an order sanctioning the removal of a licence now in force and held by A. B. [or by me the said C. D. of], for the sale of [*as in the original licence*], at certain premises situated at in the division of N. in the said county, and known by the sign of the " , " from the said premises to number in street in in the same division [*or to in the division of O. in the said county*], (of which licence when removed I desire to be the holder).]

Given under my hand this day of 187 .

A. B.

At the General Annual Licensing Meeting, &c., or an adjournment of, &c. [caption as in licences in "Appendix I."]:

We [*describing the justices as in the same licences*] do by this order sanction the removal of the within licence now in force and held by *A. B.*, of &c., for the sale of at certain premises situated at in the division of *N.* in the said county, and known by the sign of the " " from the said premises to situate in the licensing district for which we act: the said licence to be held by the said *A. B.* [*or C. D. of &c.*]

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c. 94.

(12) Order of
licensing
justices
sanctioning
removal, by
indorsement
on original
licences.

Given under our hands and seals at the [adjourned] general annual licensing meeting aforesaid.

[*Justices' signatures and seals.*]

(8) *Register of Licences and Certificates.*

[The enactments on this subject are given in a separate chapter, VII., *post*, p. 129.]

CHAPTER III.

35 & 36 Vict.
c. 94.

CONFIRMATION OF GRANT OF NEW LICENCES AND
CERTIFICATES BY LICENSING COMMITTEE.

Preliminary
observations.

THE provisions following which provide for the *confirmation* of the grant of justices' *new* licences and certificates by a standing licensing committee in counties, and a similar one in boroughs, before they are in operation, in lieu of the old mode (now repealed) of appealing to the quarter sessions against the *refusal* of the justices to *grant* such licences and certificates, effect a very great change in the law. It follows now that if the licensing justices *refuse* to grant such licences there is *no* appeal, and the confirming authority, both in counties and boroughs, cannot interfere. If the confirming authority refuse to confirm the grant of the licence there is an end of the matter, for there is no appeal from their decision; and it will be seen from 37 & 38 Vict. c. 49, s. 27, *ante*, p. 76, that there is no appeal with respect to the grant of new certificates under the Wine and Beerhouses Acts, 1869 and 1870. There is still, however, the appeal against the refusal to *renew* or *transfer* a licence under sects. 4 and 14 of the Alehouse Act (9 Geo. 4, c. 61), given by sects. 27, 28, 29 of that act. See them set out in Chap. VI., *post*, pp. 122—126.

Licensing
committee of
justices in
counties.
Sect. 37.

The 35 & 36 Vict. c. 94, s. 37, enacts:—"In counties a grant of a new licence shall not be valid unless it is confirmed by a standing committee of the county justices, in this act called the county licensing committee:

But a licence to sell any intoxicating liquor for consumption only off the premises shall not require confirmation by any authority.

Confirmation of licence to sell liquor not to be consumed on the premises not required.

The justices in quarter sessions assembled for every county shall annually appoint from among themselves for the purposes of this act a county licensing committee,—or they may appoint more than one such committee, and assign to any such committee such area of jurisdiction as they shall think expedient.

37 & 38 Vict. c. 49, s. 24.

— To be annually appointed.

35 & 36 Vict. c. 94, s. 37.

A county licensing committee shall consist of not less than three nor more than twelve members.

The quorum of a county licensing committee shall be three members.

— Quorum.

Ib.

Any vacancies arising in any such committee from death, resignation or other causes, may be from time to time filled up by the justices in quarter sessions by whom the committee is appointed.

— Vacancies.

Ib.

A county licensing committee shall be deemed to be a standing committee of the quarter sessions by whom they are appointed for the year succeeding their appointment,—and their jurisdiction and proceedings shall not be affected by the termination of the sessions at which they were appointed. The members of a committee retiring at the end of the year may be re-appointed;—and if from any cause members have not been appointed in any year to succeed the retiring members, such retiring members may continue to act as the committee until their successors are appointed.

— Committee to act for a year, and may be re-appointed.

Ib.

The justices in quarter sessions shall make such regulations with respect to the meetings of any such committee and the transaction of business thereat as they may think fit.

—Regulations to be made as to transaction of business.

Ib.

The clerk of the peace of the county shall by himself or his deputy be the clerk of the county licensing committee or committees, and shall perform all such duties in relation to any such committee or committees as he

—Clerk of the peace to be clerk of committee.

Ib.

35 & 36 Vict.
c. 94.

Sect. 37.

As to new
licences
granted in
1872.

1b.

is required by law to perform in relation to the justices in quarter sessions assembled.

Provided that so far as respects any new licences to be granted in any county at any general annual licensing meeting, or any adjournment thereof held between the twentieth of August and the end of September, in the year one thousand eight hundred and seventy-two, the justices of such county may, at any adjourned quarter sessions or general sessions (if they think fit to hold a general sessions), at any time before the first day of October, one thousand eight hundred and seventy-two, appoint a county licensing committee,—but if no such licensing committee be appointed before such date as last aforesaid the justices of the county in quarter sessions assembled shall be deemed to be the county licensing committee for the purpose of any new licence granted at such annual licensing meeting;—and any such new licence, if confirmed by the county licensing committee, or by the said justices in quarter sessions, shall be in force from the day of the confirmation thereof until the eleventh day of October, 1873.”

Vide the “preliminary observations” at the commencement of this Chapter (p. 94) as to operation of this section and the changes made in the law by it.

Respondent, who had held licences granted by the Commissioners of Excise for the sale only of wine and beer for consumption on his premises, in the county of Middlesex, under the authority of the justices’ certificates required by the Wine and Beerhouse Act, 1869, applied for and obtained at the general annual licensing meeting in March, 1873, a victualler’s or publican’s licence in respect of the same premises, under 9 Geo. 4, c. 61, and Licensing Act, 1872. The confirming authority of the county determined that the respondent had not obtained a new licence within the definition in Licensing Act, 1872, s. 74, and therefore did not require a confirmation under that act. Following that determination, a magistrate dismissed a summons against the respondent for selling spirits without being duly

licensed. Held, on case stated, that, notwithstanding the interpretation clause, this was a new licence under Licensing Act, 1872, and required confirmation under sect. 37. *Marrick v. Codlin*, 80 L. T. 719; 38 J. P. 452, 518.

35 & 36 Vict.
c. 94.

Sect. 37.

Sect. 43. "Any person who appears before the licensing justices and opposes the grant of a new licence, and no other person, may appear and oppose the confirmation of such grant by the confirming authority in counties or boroughs (*a*);—and the confirming authority may award such costs as they shall deem just to the party who shall succeed in the proceedings before them (*b*). In a county the justices in quarter sessions assembled,—and in a borough the borough justices,—shall make rules as to the proceedings to be adopted for confirmation of new licences and the costs to be incurred in any such proceedings, and the person by whom such costs are to be paid" (*c*).

Opposing confirmation of grant of new licence.

Sect. 43.

—Costs to successful party.

—Justices to make rules as to proceedings.

Where the confirming authority is a joint committee, that committee shall make rules in pursuance of section forty-three of the principal act as to the proceedings to be adopted for the confirmation of new licences, and as to the costs of such proceedings, and the persons by whom such costs are to be paid.

Joint committee to make rules under s. 43 of principal Act.

37 & 38 Vict.
c. 49, s. 25.

(*a*) See *ante*, p. 62, as to who is entitled to oppose the grant of a new licence, *i. e.*, a licence granted for the first time at a general annual licensing meeting (see sect. 74, *ante*, pp. 25, 31). The same person, and no other, is here allowed to oppose the confirmation of such grant. See note (*c*), *infra*.

(*b*) These costs will be recoverable before justices summarily from the person opposing under sect. 51, last paragraph, set out in Chap. XII.

(*c*) The rules as to the proceedings will provide, of course, also for notice being given to the holder and the clerk of the peace of the intention to oppose the confirmation of the grant of the licence.

Any person interested in any premises about to be constructed or in course of construction for the pur-

Provisional grant and confirmation

of licences to
new pre-
mises.

37 & 38 Vict.
c. 49, s. 22.

pose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices and to the confirming authority for the provisional grant and confirmation of a licence in respect of such premises; and the justices and confirming authority, if satisfied with the plans submitted to them of such house, and that if such premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a licence in respect thereof, may make such provisional grant and order of confirmation accordingly.

Ib.

A provisional grant and order of confirmation shall not be of any validity until it has been declared to be final by an order of the licensing justices made after such notice has been given as may be required by the justices at a general annual licensing meeting or a special sessions held for licensing purposes. Such declaration shall be made if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional licence.

Ib.

A provisional grant and confirmation of a licence shall be subject to the same conditions as to the giving of notices and generally as to procedure to which such grant and confirmation would be subject if they respectively were not provisional, with this exception, that where a notice is required to be put up on a door of a house such notice may be put up in a conspicuous position on any part of the premises.

Ib.

This section shall, with the necessary variations, extend to the provisional removal to any premises of an existing licence under section fifty of the principal act. See *ante*, p. 91.

The provisions of the 35 & 36 Vict. c. 94, as to the confirmation of the grant of licences by borough justices, as regards the constitution of the confirming authority, are somewhat different to that for counties, but in other respects they are the same, and are contained in sect. 38, set out in Chap. II., *ante*, pp. 84—87.

35 & 36 Vict.
c. 94.

Confirmation
in boroughs.
Sect. 38.

By the last paragraph of sect. 50, set out in Chap. II., *ante*, p. 92, authorizing the removal of licences from one part of a district to another, &c., it is provided that "no such order shall be valid unless confirmed by the confirming authority of the licensing district."

Confirming
order of re-
moval of
licences from
one house.&c.
to another.
Sect. 50.

FORM.

[The Form of Confirmation of Licences, as prescribed by the Secretary of State, under sect. 48, subs. 1, *ante*, p. 64, is given in "Appendix I."]

CHAPTER IV.

RENEWAL OF LICENCES AND CERTIFICATES BY
LICENSING JUSTICES.35 & 36 Vict.
c. 94.Definition of
"renewal" of
a licence.

"THE renewal of a licence" means a licence granted at a general annual licensing meeting by way of renewal. Sect. 74, *ante*, p. 25. It does not need confirmation by the county or borough committee.

No notice of
application
for renewal
necessary.
32 & 33 Vict.
c. 27, s. 7.

By 32 & 33 Vict. c. 27, s. 7 (which, as we have seen, is now incorporated into the other acts, pp. 58, 59), it is provided (*inter alia*), that "where application is made to the justices for the grant of a certificate under this act by way of renewal only, notice in pursuance of this section shall not be requisite." By 35 & 36 Vict. c. 94, s. 36 (set out in Chap. VII., as to registers of licences) the person applying for a renewal is to state the name of the owner of the premises.

Provisions as
to renewal of
licences.
Sect. 42.

35 & 36 Vict. c. 94, s. 42, enacts:—Where a licensed person applies for the renewal of his licence the following provisions shall have effect:

— Personal
attendance of
applicant.
1b.

(1.) He need not attend in person at the general annual licensing meeting unless he is required by the licensing justices so to attend (*a*):

37 & 38 Vict.
c. 49, s. 26.

But now the Act of 1874, s. 26, after reciting the above provision (1) of section forty-two, enacts that "such requisition shall not be made, save for some special cause personal to the licensed person to whom such requisition is sent." And that "it shall not be

necessary to serve copies of notices of any adjournment of a general annual licensing meeting on holders of licences or applicants for licences who are not required to attend at such adjourned annual general licensing meeting.”

37 & 38 Vict.
c. 49.
Sect. 26.

- (2.) The justices shall not entertain any objection to the renewal of such licence, or take any evidence with respect to the renewal thereof, unless written notice of an intention to oppose the renewal of such licence has been served on such holder not less than seven days before the commencement of the general annual licensing meeting (b):—provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any licence to a future day, and require the attendance of the holder of the licence on such day, when the case will be heard and the objection considered, as if the notice hereinbefore prescribed had been given (c).

— Notice to oppose the renewal to be given :
35 & 36 Vict.
c. 94, s. 42.

— Justices may adjourn and require licensed person to attend, although no notice given to oppose the renewal.
Ib.

A notice of an intention to oppose the renewal of a licence served under section forty-two of the principal act shall not be valid unless it states in general terms the grounds on which the renewal of such licence is to be opposed.

37 & 38 Vict.
c. 49, s. 26.

- (3.) The justices shall not receive any evidence with respect to the renewal of such licence which is not given on oath.

Evidence to be upon oath.
35 & 36 Vict.
c. 94, s. 42.

Subject as aforesaid, licences shall be renewed and the powers and discretions of justices relative to such renewal shall be exercised as heretofore (d).

See sect. 46, *ante*, p. 47, *et seqq.*, as to renewal of licences for

35 & 36 Vict.
c. 94.

houses, &c., licensed for the sale of wine or beer for consumption *on*, conditionally upon premises being made of sufficient value.

(a) This provision, so far as renewals are concerned, impliedly repeals the provisions of the 9 Geo. 4, c. 61, s. 12, as to the personal attendance of the applicant. See Form of Notice from the Justices requiring his attendance, No. 13, p. 105, which may be sent by the post as provided by sect. 70, *ante*, p. 37.

(b) It would seem that any person may oppose the renewal; see *ante*, p. 62, and note (c) *infra*. As no specific grounds on which the opposition can be made are stated here, it is apprehended that the matter will rest with the licensing justices alone in regard to alehouses; see note (d), *infra*. The provision for notice to the holder of the intention to oppose the renewal of his licence is also new; see Form of Notice, No. 14, p. 106. If the justices should refuse to renew the licence there is an appeal to the quarter sessions against such refusal as heretofore under 9 Geo. 4, c. 61, s. 27; see Chap. VI., *post*, p. 122; and see 35 & 36 Vict. c. 94, s. 53, *post*, p. 105.

(c) G. applied for renewal of licence to sell beer, by retail, to be drunk on the premises, and attended general licensing meeting, August, 1873, having received no notice of opposition and not required to attend by justices. He paid fees to the justices' clerk, who said, "all right." G. left, supposing licence would be renewed. The justices had considered the applications, and determined to adjourn eleven, G.'s among them, to satisfy themselves of their value; and gave notice thereof in open court. Knowledge of this was not brought home to G. On September 24, the justices refused renewal, because the premises were not of requisite value. G. applied for mandamus to justices to grant licence:—Held, not entitled to mandamus, but that justices were bound to have given him notice and required his attendance at adjourned meeting, and that mandamus must be granted to hold adjourned meeting, and after notice to G., to hear and determine his application. Semble, that any one of the licensing justices could himself make objection to renewal (*Reg. v. Farquhar*, L. R., 9 Q. B. 258).

(d) This refers to 32 & 33 Vict. c. 27, s. 8, as amended, and set out, *ante*, pp. 75, 76, as the grounds on which a beer and wine licence authorizing consumption *off* the premises can be refused still apply to renewals and transfers of such licences; for if to be consumed *on* the premises, then justices may refuse the certificate without stating the grounds upon which they do so. As to enlargements or alterations of premises, if they are material the justices can treat them as a new house or not (*Reg. v. Smith*, 15 Law T., N. S. 178).

As to renewal
of licences for
beer and
wine existing

As to renewal of licences for beer and wine existing on 1st May, 1869, the 32 & 33 Vict. c. 27, s. 19 (extended, as shown *infra*, by 33 & 34 Vict. c. 29, s. 7),

provides,—“Where, on the first of May, 1869, a licence under any of the said recited acts (a) is in force [and has been renewed from time to time, whether such licence continues to be held by the same person or has been or may be transferred to any other person or persons, 33 & 34 Vict. c. 29, s. 7] with respect to any house or shop for the sale by retail therein of beer, cider, or wine to be consumed on the premises, it shall not be lawful for the justices to refuse an application for a certificate for the sale of beer, cider, or wine to be consumed on the premises in respect of such house or shop, except upon one or more of the grounds upon which an application for a certificate under this act in respect of a licence for the sale of beer, cider, or wine, not to be consumed on the premises, may be refused, in accordance with this act” (b).

35 & 36 Vict.
c. 94.
on 1st May,
1869.
32 & 33 Vict.
c. 27, s. 19;
33 & 34 Vict.
c. 29, s. 7.

(a) 1 Will. 4, c. 64; 4 & 5 Will. 4, c. 85; 3 & 4 Vict. c. 61; 24 & 25 Vict. c. 21; 26 & 27 Vict. c. 33; and 23 Vict. c. 27.

(b) *E. g.*, under 32 & 33 Vict. c. 27, s. 8, *ante*, pp. 75, 76.

Where a licence or certificate of a house licensed on the 1st May, 1869, has afterwards dropped or been refused, the justices, on the true construction of 32 & 33 Vict. c. 27, s. 19, have the same discretion to refuse a fresh certificate for a licence to sell beer to be consumed on the premises as if the application were in respect of a house, which had not been licensed on May 1st, 1869, and the repeal of the declaratory section (sect. 3) of 34 & 35 Vict. c. 88, is immaterial. The applicant who on May 1, 1869, held a licence to sell beer on his premises under 11 Geo. 4 & 1 Will. 4, c. 64, s. 2, did not apply for a certificate under sect. 19 of Wine and Beerhouse Act, 1869, at licensing meetings of 1870 and 1871; and in 1872, the justices, in exercise of their discretion under sect. 3 of Intoxicating Liquors (Licences Suspension) Act, 1871, refused his application for such certificate. Licensing Act, 1872, repeals Act of 1871, but in 1873, the justices again refused the applicant a certificate, and upon grounds other than those limited by Act of 1869 (*Reg. v. Curzon*, 42 L. J. (N. S.) M. C. 155; L. R., 8 Q. B. 400; 29 L. T., N. S. 32).

The 35 & 36 Vict. c. 94, s. 48, subs. 2 (the remainder of the section being in Chap. II., *ante*, p. 64), enacts,—“A renewal of a licence may be made by an

Form of renewal of a licence.
35 & 36 Vict.
c. 94, s. 48,
subs. 2.

35 & 36 Vict.
c. 94.

endorsement on the licence, or by the issue of a copy of the old licence, but in the latter case there shall be endorsed on such copy all convictions made within the previous five years which are endorsed on the old licence."

Vide sect. 36 in Chap. VII., *post*, p. 129, as to keeping a register of licences and convictions. See form No. 15, *post*, p. 106, as to forms of renewal prescribed by the secretary of state.

Six-day
licences.

See sect. 49, *ante*, p. 88, as to a six-day licence, and 37 & 38 Vict. c. 49, s. 7, *ante*, p. 89, as to early closing licences.

Fees on re-
newal of
licences.

The fees payable to a justices' clerk for the renewal of a licence for an alehouse is regulated by 9 Geo. 4, c. 61, s. 15 (*ante*, p. 66), being 7s. 6d., and 1s. more in respect of the registration of licences under 35 & 36 Vict. c. 94, s. 36 (in Chap. VII., *post*, p. 129); for a certificate under the Wine and Beerhouse Acts, 1869, 1870, 5s., and 1s. more for such registration,—the 33 & 34 Vict. c. 29, s. 4, subs. 3, enacting, that "for every certificate granted by way of renewal under the principal act [32 & 33 Vict. c. 27] or this act (*a*), there shall be payable to the clerk of the justices the sum of four shillings for all matters to be done by such clerk, and one shilling for the constable or officer for service of notices;—and if any clerk of justices demand or receive any greater or further fee or payment in respect of any such renewal, whether for himself or for any other officer or person, he shall, upon summary conviction, be liable to a penalty of five pounds" (*b*). As regards other licences granted under the 35 & 36 Vict. c. 94,—*i. e.*, those for the sale of sweets, liqueurs, wine, and spirits, in shops, &c.,—there is no statutory provision in any of the acts, and the amount of fees must be regulated in these cases by the table of fees in force in the licensing district.

—Penalty on
clerk taking
more than
fees allowed.

(a) These are for the sale of beer, cider or wine, by confectioners and eating-house keepers, bottled beer and table-beer.

35 & 36 Vict.
c. 94.

(b) See Chap. XII. for the recovery of this penalty.

The removal of a licence from one part of a licensing district to another, &c., is provided for by 35 & 36 Vict. c. 94, s. 50, *ante*, pp. 91, 92 (Chap. II.).

Removal of licences from one part of a district to another, &c.

As to postponing the application for the renewal of a licence, see 33 & 34 Vict. c. 29, s. 11, *ante*, p. 78 (Chap. II.).

Postponement of application for renewals.

As there is still an appeal to quarter sessions against the refusal of justices to renew a licence (see "Preliminary Observations" to Chap. III., *ante*, p. 94, and the appeal clause in Chap. VI., *post*, p. 122), 35 & 36 Vict. c. 94, s. 53, provides (*inter alia*, the remainder of the section being in Chap. XII.),—"Where the justices refuse to renew a licence, and an appeal against such a refusal is duly made (a), and such licence expires before the appeal is determined, the commissioners of inland revenue may, by order, permit the person whose licence is refused to carry on his business during the pendency of the appeal upon such conditions as they think just;—and, subject to such conditions, any person so permitted may, during the continuance of such order, carry on his business in the same manner as if the renewal of the licence had not been refused.

Continuance of licence by inland revenue during pendency of appeal against justices' refusal to renew.
Sect. 53.

(a) Under 9 Geo. 4, c. 61, s. 27, set out in Chap. VI., *post*, pp. 122, 123.

FORMS.

To Mr. A. B. of, &c.

[Place.]

Sir,—I am directed by two of the justices for this licensing district to state that, should you intend to apply at the next general annual licensing meeting, to be held at the next day next, for the renewal of the licence now held by you for the sale of , they require you to attend in person to make your application.

(13) Notice from clerk to justices requiring holder of licence to attend upon application to renew licence.

I am, &c.

T. B., clerk of the licensing justices.

35 & 36 Vict.
c. 94.

To A. B. of, &c.

I, C. D., of [address and description] do hereby give you notice that it is my intention to appear by myself, my counsel or attorney at the general annual licensing meeting to be held for at on the day of next, and oppose the renewal of the licence which you now hold for the sale by retail of at the premises now occupied by you at in the said licensing district, on one or more of the following grounds (that is to say):—[Here set them out].

Dated this day of 187 .

C. D.

(15) Renewal
of licences.

The forms of renewal of a licence separately and by indorsement on original licence, are given in Appendix I. with other forms prescribed by the secretary of state under sect. 48, *ante*, p. 64.

CHAPTER V.

TRANSFER OF LICENCES AND CERTIFICATES BY
LICENSING JUSTICES.

“THE transfer of a licence” means, according to the definition given in sect. 74 of 35 & 36 Vict. c. 94 (see p. 25, and note (*g*) thereto, p. 32), a transfer made in special sessions under the fourth section of the 9 Geo. 4, c. 61, given in this Chapter, and like the licence under sect. 14 of the same act is really, and is so treated by the secretary of state in the forms prescribed by him, as a new licence, or interim licence, expiring at the same time as the original licence.

Definition of the “transfer” of a licence.

It will be seen by 33 & 34 Vict. c. 29, s. 4, subs. 5 (Chapter II., *ante*, p. 77), that the provisions of 9 Geo. 4, c. 61, relating to the matters in this Chapter, are applicable to it.

Application of 9 Geo. 4, c. 61.

The 9 Geo. 4, c. 61, s. 4, enacts—“That the justices assembled . . . at the general annual licensing meeting in every . . . year, shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden, in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant,—at which special sessions it shall be lawful for the justices then and there assembled, in the cases and in the manner and for the time hereinafter directed, to license such persons intending to keep inns theretofore kept by other persons being about to remove from such inns as they the said

Appointment of special sessions for the year for transferring licences.

9 Geo. 4, c. 61, s. 4.

—Justices to license persons.

9 Geo. 4, c. 61, justices shall, in the execution of the powers herein
s. 4. contained, and in the exercise of their discretion, deem fit and proper persons, under the provisions hereinafter enacted, to be licensed to sell exciseable liquors by retail, to be drunk or consumed on the premises."

Form of appointment of days, see No. 16, *post*, p. 119. See No. 20, *post*, p. 121, as to the form of transfer prescribed by the secretary of state.

Precept, &c. thereof to be given as for general annual licensing meeting.

Sect. 5.

Notice of application to transfer a licence.

35 & 36 Vict. c. 94, s. 40.

Sect. 5, set out *ante*, p. 58, contains provisions as to giving notices of the transfer days fixed. *Vide* Forms, Nos. 16—18, *post*, pp. 119, 120.

By 35 & 36 Vict. c. 94, s. 40, it is enacted (*inter alia*), that "Every person intending . . . to apply for the transfer of a licence shall publish notice of such application as follows; that is to say,

(1.) [*As to new licences, given at pp. 58, 59.*]

(2.) In the case of the transfer of a licence he shall, fourteen days (*a*) prior to one of the special sessions appointed by the justices for granting transfers of such licences, serve a notice of his intention to transfer the same upon one of the overseers of the parish, township, or place in which the premises in respect of which his application is to be made are situate, and on the superintendent of police of the district. This notice shall be signed by the applicant or by his authorized agent (*b*), and shall set forth the name of the person to whom it is intended that such licence shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving such notice:

Authentica-
 tion of
 licences.

(3.) [*Given ante, p. 65, as to new licences.*]

Proviso [*as to new licences in 1872, and notices.*]

under ss. 5 and 14 of 9 Geo. 4, c. 61, given ante, p. 59].

(a) This notice under the repealed act, 9 Geo. 4, c. 61, s. 11, was five days only. *Vide* form of Notice, No. 19, *post*, p. 120.

(b) This is new as to the notice being signed by an agent.

The attendance of the applicant is necessary in the case of the transfer of any licence, as provided by 9 Geo. 4, c. 61, s. 12 (*ante*, p. 62, Chap. II.), being the only enactment in any act which is applicable to a transfer.

Attendance of applicant necessary.
9 Geo. 4, c. 61, s. 12.

The 33 & 34 Vict. c. 29, s. 4, subs. 4, provides,—
“It shall be in the discretion of the justices to whom an application for a transfer is made, either to allow or refuse the application, or to adjourn the consideration thereof.”

Allowance or refusal of application and adjournment.
33 & 34 Vict. c. 29, s. 4, subs. 4.

This applies only to beer and wine licences under that act and 32 & 33 Vict. c. 27; but in respect to alehouses they may adjourn from day to day (9 Geo. 4, c. 61, s. 3, *ante*, p. 57).

The form of transfer under sect. 4 of 9 Geo. 4, c. 61, has been prescribed by the secretary of state, and the authority given him by 35 & 36 Vict. c. 94, s. 48, subs. 1 (see *ante*, p. 64); and is given in the “Appendix I,” for use either as an indorsement on the old licence (like the form of a renewal so prescribed, and as authorized by subs. 2 in that case), or as a separate instrument.

Form of transfer of licence.

The 9 Geo. 4, c. 61, s. 14, relates to the grant of licences in case of death, bankruptcy, insolvency, or change of occupancy during the currency of a licence, and to cases where the occupier of licensed premises has omitted to apply for a licence, or the premises have been pulled down or destroyed. That section as in the statute (which needs to be carefully analyzed) is as follows:—“That if any person duly licensed under this act shall (*before the expiration of such*

9 Geo. 4, c. 61.
Licences in cases of death, bankruptcy, change of occupancy, and other contingency.
Sect. 14.

9 Geo. 4, c. 61.

Sect. 14.

— Dying, &c.
before expiration
of
licence;

Ib.

— omission
to apply for
licence at
annual meet-
ing.

Ib.

— House
pulled down
for public
purposes, or
destroyed, &c.

Ib.

Licence to be
granted to
heirs, &c. of
person dying,
or assignees
of bankrupt,
&c. or to the
new tenant.

Ib.

licence) die,—or shall be by sickness or other infirmity rendered incapable of keeping an inn,—or shall become bankrupt, or shall take the benefit of any act for the relief of insolvent debtors;—or if any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from, or yield up the possession of the house specified in such licence;—or if the occupier of any such house, being about to quit the same, shall have wilfully omitted or shall have neglected to apply at the general annual licensing meeting, or at any adjournment thereof, for a licence to continue to sell exciseable liquors by retail, to be drunk or consumed in such house;—or if any house, being kept as an inn by any person duly licensed as aforesaid, shall be or be about to be pulled down or occupied under the provisions of any act for the improvement of the highways or for any other public purpose, or shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn;—

It shall be lawful for the justices assembled as aforesaid at a special session holden under the authority of this act (*a*) for the division or place in which the house so kept or having been kept shall be situate in any one of the above-mentioned cases, *and in such cases only*, to grant to the heirs, executors, or administrators of the person so dying, or to the assigns of such person becoming incapable of keeping an inn,—or to the assignee or assignees of such bankrupt or insolvent,—or to any new tenant or occupier of any house having so become unoccupied, or to any person to whom such heirs, executors, administrators, or assigns, shall by sale or otherwise have *bonâ fide* conveyed or otherwise made over his or their interest in

the occupation and keeping of such house,—a licence to sell exciseable liquors by retail, to be drunk or consumed in such house or the premises thereunto belonging;—

9 Geo. 4, c. 61.
Sect. 14.

Or to grant to the person whose house shall as aforesaid have been *or* shall be about to be pulled down *or* occupied for the improvement of the highways *or* for any other public purpose, *or* have become unfit for the reception of travellers, *or* for the other legal purposes of an inn, *and* who shall open and keep as an inn some other fit and convenient house, a licence to sell exciseable liquors by retail, to be drunk or consumed therein :

— *or* to the person whose house is pulled down or destroyed, &c. a licence for some other fit house.
Ib.

Provided always, that every such licence shall continue in force only from the day on which it shall be granted until the fifth day of April or the tenth day of October then next ensuing, as the case may be (*b*):

Duration of such licence.
Ib.

Provided also (*c*), that every person intending to apply, in any of the above-mentioned cases, at any such special session, for a licence to sell exciseable liquors by retail, to be drunk or consumed in a house or premises thereunto belonging in which exciseable liquors shall *not have been sold* by retail, to be drunk or consumed on the premises, *by virtue of a licence granted at the general annual licensing meeting next before such special session*, shall on some one Sunday within the six weeks next before such special session, at some time between the hours of ten in the forenoon and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel on some other public and conspicuous place within such parish or place, such and the like notice as is hereinbefore directed (*d*) to be affixed by every

If no licence granted at the previous annual licensing meeting, six weeks' notice to be given, served, &c. as for a new licence.
Ib.

9 Geo. 4, c. 61.
sect. 14.

person intending to apply at the general annual licensing meeting for a licence to sell exciseable liquors by retail, to be drunk or consumed in a house *not theretofore kept as an inn*, and shall in like manner serve copies of the said notice on one of the overseers of the poor and on one of the constables or other peace officers of such parish or place" (e).

(a) These special sessions are appointed under sect. 4, *ante*, p. 107.

(b) The licences when granted in Middlesex, Surrey and the City of London expire on the 5th April, and in other counties on the 10th October, after the granting of them.

(c) It will be observed by its context that this last proviso is not applicable to a house licensed at the previous annual licensing meeting, and, therefore, in such cases the six weeks' notice under this section is not necessary; nor is the new enactment of 35 & 36 Vict. c. 94, s. 40, subs. 2, *ante*, p. 108, applicable to cases where the former occupier has yielded up possession, and neither he nor his representatives will give the notice under the last-named section, or concur in the application to the special sessions by the new tenant. It applies, apparently, only to cases where the occupier has omitted to apply for his renewal licence, or the house is pulled down, or destroyed by fire, &c., for in the other cases provided by this section the application under it must be made before the expiration of the licences. See "Analysis of Section 14," *infra*, and cases there referred to.

(d) The notice here referred to is that required for a new licence, now subject to the provisions of the 32 & 33 Vict. c. 27, s. 7, as amended. See *ante*, p. 59. In many cases there would not be time before the expiration of the licence to give this notice. Under such circumstances the decision in *Reg. v. Justices of Middlesex*, 40 L. J. (N. S.) M. C. 184; 25 L. T., N. S. 41, will allow of its being done at a special session under 9 Geo. 4, c. 61, s. 4, *ante*, p. 107, held subsequent to the annual licensing meeting.

(e) Instead of the "constable" of the parish, the "superintendent of police of the district" must be now read (see 33 & 34 Vict. c. 29, s. 4, subs. 1, *ante*, p. 60).

As to temporary continuance of licences forfeited for single offences, see 37 & 38 Vict. c. 49, s. 15, *post*, p. 192.

Analysis of Section 14 of 9 Geo. 4, c. 61.

Analysis of
section 14.

The following is offered as a careful analysis of the rather confused enactments of the 14th section, showing the contingen-

ties and the persons to receive the new licences, with other requirements according to the decision :—

9 Geo. 4, c. 61.
Sect. 14.
Analysis of
this section.

Contingencies.	Persons to whom licences to be granted.
1. Death of the licensed person.	The heirs, &c. of the deceased, or the person to whom they have made over their interest (f).
2. Incapacity of licensed person, by sickness, &c. to keep an inn.	The assigns of person incapacitated.
3. Bankruptcy or insolvency of the licensed person.	The assignees of the bankrupt.
4. Licensed person, or his heirs, &c. removing from or yielding up possession. [See <i>Simpkin v. Justices of Birmingham</i> , <i>infra</i> , in "Cases."]	The new tenant, or the person to whom the heirs, &c. have sold their interest.
5. Wilful omission or neglect of licensed person about to quit, to apply for a renewal licence at the annual licensing meeting. [See <i>Reg. v. Justices of Middlesex</i> , <i>infra</i> , in the "Cases."]	The new tenant, or the applicant. [In this case, a six weeks' notice necessary. See second proviso, <i>ante</i> , p. 111.]

(f) The 3 & 4 Vict. c. 61, s. 8, provides that on the death of a person licensed to sell beer, &c. the executors or administrators, or the widow or child, may be authorized to sell for the remainder of term of licence. As to refreshment-houses, the 23 Vict. c. 27, s. 12, provides : that on the death of a licensed person, the excise may, without the interference of justices, authorize his representative, or widow, or child, to continue the business for which the licence was granted for the remainder of the term thereof, and the same on the removal of a licensed person ;— but in the case of a licence for the sale of foreign wine by retail to be consumed upon the premises, it is not to be transferred unless the assignee has a refreshment-house licence or produces a certificate from a justice of the place that the justice does not object to the transfer being made (see 25 Vict. c. 22, s. 15).

3 & 4 Vict.
c. 61, s. 8 ;
23 Vict. c. 27,
s. 12.

9 Geo. 4, c. 61.

Sect. 14.

Analysis of
this section.*Contingencies.**Persons to whom licences to
be granted.*

6. House being, or being about
to be, pulled down for any
public purpose.

7. Or by fire, tempest, &c.
rendered unfit for tra-
vellers and the purposes of
an inn.

8. Conviction of licensed per-
son for certain offences
(37 & 38 Vict. c. 49, s. 15,
post, p. 191).

The person whose house it is,
if he shall open and keep as
an inn some other fit and
convenient house. [In this
case, a six weeks' notice
necessary, as in Case 5.]

The assigns of person con-
victed, as in Case 2.

*Cases under the Section.*Cases under
the section.

Reg. v. Justices of Middlesex (40 L. J. (N. S.) M. C. 184;
25 Law T., N. S. 41), decided that a new tenant taking posses-
sion during the existence of the licence of his predecessor, and
not being in time to apply at the general annual licensing
meeting, and who gave the proper notices and applied at a special
sessions under this section, held after the annual meeting, was not
prejudiced by his predecessor's application for a renewal licence
being refused at such annual meeting, but was entitled to a
licence as a new tenant within this section, if his character was
unobjectionable (he being the occupier of a beer-house). *Reg.
v. Justices of West Riding of Yorkshire* (39 L. J. (N. S.) M.
C. 17; 21 Law T., N. S. 490), decided that the refusal of a
licence to the former occupier upon a ground personal to him,
was no bar to the application of a new tenant at an adjourned
meeting.

*Licence for Sale of Exciseable Liquors—Change of Occu-
pancy—Expiration of Licence—Subsequent Removal—New
Tenant—Application to Special Sessions*—9 Geo. 4, c. 61, s. 14.
—W., duly licensed under 9 Geo. 4, c. 61, applied at a general
annual licensing meeting, on September 15, for renewal of his
licence, which was refused. The licence expired on October 10
following, and he then ceased to sell exciseable liquors, but con-
tinued in occupation of the house till October 13; he then gave
up possession to S., who, after giving the proper notices, applied

at special sessions for a new licence in respect of the premises, under sect. 14. Justices refused the application, because as W. was not licensed within the terms of the section at time of removal from the house, they had no jurisdiction:—Held, decision of justices was right (*Simpkin*, app., *Birmingham, JJ.*, resp., L. T., 7 Q. B. 482; 26 L. T., N. S. 620; *S. C. nom. Reg. v. Birmingham, JJ.*, 41 L. J., Q. B. 241; M. C. 102).

9 Geo. 4, c. 61.

Sect. 14.

Cases under the section.

Licence for Sale of Exciseable Liquors—New Tenant—Application to Special Sessions after refusal by General Sessions— 9 Geo. 4, c. 61, s. 14.—A house in Middlesex having been licensed for some years under 9 Geo. 4, c. 61, L. the licensed tenant gave up possession to T. on February 6. At the adjourned general annual licensing meeting on March 24, application for licence was made on behalf of T. This was refused, and no appeal made under sect. 27. The licence having expired on April 5, the house was shut. On May 4, T. applied under sect. 14 to special sessions, who refused the licence on the ground that the renewal had been refused at the general meeting. T. again applied on July 4 to special sessions under sect. 14, and the justices refused a licence on ground that the case was not within sect. 14. On appeal, general sessions refused on same ground:—Held, that having applied to and been refused by general licensing meeting, T. could not go to special sessions (*Reg. v. Taylor*, 42 L. J., M. C. 13; L. R., 7 Q. B. 487; 36 J. P. 308).

In effect, these decisions are, that the application under the section must be made before the expiration of the licence.

Licence for Sale of Exciseable Liquors— 9 Geo. 4, c. 61, s. 14—*Change of Tenant—Discretion of Justices—Jurisdiction of Special Sessions.*—G., the occupier of a house, licensed under 9 Geo. 4, c. 61, having been fined for an offence against the tenor of his licence, was ejected by his landlord on May 17. In June, H. was let into possession, and on June 5, the petty sessions refused to indorse G.'s licence to H. under 5 & 6 Vict. c. 44. H. then gave up possession, and at the general licensing meeting on September 4, the house was unoccupied, and no application made for a licence. Appellant afterwards became tenant, and applied at special sessions on November 20, for new licence under sect. 14, but after hearing the case on the merits the jus-

9 Geo. 4, c. 61.

Sect. 14.

Cases under
the section.

Form of
licence in
case of death,
&c. under
s. 14.

Fees for
licences.

Temporary
authority to
sell, &c. until
a special ses-
sions transfer
day.
5 & 6 Vict.
c. 44, s. 1.

tices refused to grant a new licence. On appeal, quarter sessions finding appellant to be a proper person, dismissed the appeal, on the ground that the granting or refusing of such new licence was within discretion of justices at special sessions:—Held, that the justices had a discretion to grant or refuse the licence. *Quære*, whether under any circumstances special sessions had any jurisdiction (*Reg. v. Rowell*, L. R., 7 Q. B. 490; 26 L. T., N. S. 732; 41 L. J., Q. B. 348; M. C. 175).

The form of the licence to be granted under the above enactment is prescribed by the secretary of state, and is referred to at p. 121, No. 21.

The fees to the clerk to the licensing justices for the licences under sects. 4 and 14 of 9 Geo. 4, c. 61, will be the same as for renewals, *ante*, p. 104.

In order to give greater facilities in the transfer of licences of inns, ale-houses and victualling-houses, the 5 & 6 Vict. c. 44 (which by the 33 & 34 Vict. c. 29, s. 4, subs. 5, and the definition of the 9 Geo. 4, c. 61, in sect. 74 of 35 & 36 Vict. c. 94, is applicable to all licences and certificates, and not confined to inns), s. 1, enacts:—"That . . . at any petty session of justices of the peace holden in and for any division of every county and riding,—and in any hundred of every county not being within such division,—and in every liberty, city, town or place within which any inn, ale-house, or victualling-house shall be situated, and for which the said justices shall be acting,—at any time when no special session shall be holden for any such division, hundred, liberty, city, town or place, it shall be lawful, in those cases where justices of the peace assembled at a special session are empowered, by the act 9 Geo. 4, c. 61 [*i. e.*, ss. 4, 14, *supra*], to transfer or grant licences, before the expiration thereof, to sell exciseable liquors by retail in the same house or premises in respect of which any person had been theretofore duly licensed, for the

majority of the justices then present (*a*), upon application made to them at any such petty session, by indorsement under their hands and seals on any licence which shall have been granted pursuant to the provisions of the said act at any general licensing meeting, or at any adjournment thereof, to authorize (if they shall deem it proper so to do, after examining upon oath all necessary parties) any person not disqualified by the said act (*b*), to whom it shall be proposed at the time of such application to transfer or grant any such licence, to use, exercise and carry on the business of a licensed victualler at the same house and on the same premises, and there to sell such exciseable liquors as might theretofore have been lawfully sold and retailed therein (*c*);—and thereupon it shall be lawful for the officer of excise empowered to transfer licences by indorsement on the excise licences required to be transferred to give the like authority to the persons so authorized by the magistrate or justices;—and the authority so granted shall continue and be in force until the then next ensuing special session which shall be holden for the division, hundred, liberty, city, town or place within which such house and premises shall be situated, and no longer;—at which special session the justices then and there assembled, upon application made to them pursuant to the said act, touching any transfer or grant of licence to the party or parties to whom such authority shall have been so given at petty sessions as aforesaid, shall hear and dispose of such application according to the provisions of the said act.” [Then follows a proviso, that this enactment is not to empower any justices at petty sessions to give such authority within any of the divisions assigned or to be assigned to the police courts within the Metropo-

5 & 6 Vict.
c. 44.

Sect. 1.

— To be granted by majority of justices at a petty sessions,
Ib.

to continue in force till the next special session.
Ib.

Proviso as to the metropolitan police district.
Ib.

5 & 6 Vict.
c. 44.
Sect. 1.

litan Police District, except in the borough of Southwark; but that when the licensed premises are situated within any of the said police court divisions, and in Southwark, one of the police magistrates sitting at such courts may grant such authority.]

(a) By sect. 4, justices disqualified from acting in the granting of licences are not to act under this act subject to the like penalty. See now 35 & 36 Vict. c. 94, s. 60, *ante*, p. 34.

(b) See the persons disqualified from holding a licence, *ante*, p. 41.

(c) See the form of indorsement on original licence or copy, not provided by the secretary of state, No. 22, *post*, p. 121.

5 & 6 Vict.
c. 44, s. 2;
and 35 & 36
Vict. c. 94,
s. 41.

Provision is made by 5 & 6 Vict. c. 44, s. 2, for a copy of a licence being indorsed where the original is lost or mislaid, and that is amended in the manner here shown by 35 & 36 Vict. c. 94, s. 41, viz.:—
“That whenever it shall be proved to the satisfaction of any such magistrate or justices at petty session, upon any application made as aforesaid, that any licence granted pursuant to the said act 9 Geo. 4, c. 61, has been lost or mislaid [*to be inserted here* ‘or if the application is for the grant of a licence, has been wilfully withheld by the holder thereof,’ 35 & 36 Vict. c. 94, s. 41], it shall and may be lawful for the said magistrate or justices to receive a copy of such licence, certified to be a true copy under the hand of the clerk to the licensing justices by whom the said licence shall have been granted, and to make such indorsement thereon as he or they might make under the provisions of this act upon the original licence;—and such indorsement upon the copy so certified shall be as valid and effectual as if the same had been made upon the said licence.”

Fees for in-
dorsement.
Sect. 3.

By sect. 3, a fee of 2s. 6d., and no more, shall be demanded and taken “for every such certified copy and every such indorsement.”

With regard to the removal of licences and certificates from one house or district to another, see *ante*, pp. 91, 92; the provisional grant and confirmation of licences to new premises, see 37 & 38 Vict. c. 49, s. 22, *ante*, pp. 97, 98, and temporary continuance of licence forfeited, see *post*, p. 192.

FORMS.

— { To *J. B.*, clerk of the licensing justices for the *N.* division, in the county of . (16) Appointment of transfer days for the year (9 Geo. 4, c. 61, s. 4).

We, the undersigned, being the majority of the justices acting for the said division, present at the general annual licensing meeting this day held at in and for the said division, do hereby appoint [eight] special sessions for the year ensuing, to be holden in and for the said division for transferring and granting licences and certificates for the following purposes [*here set them out as in form No. 1, ante, p. 68*], in the cases and in manner by law directed, to be holden on the respective days hereafter mentioned, at the in in the said division, at the hour of [eleven] in the forenoon of each day, that is to say—

On the day of next, &c., &c. [*stating each of the [eight] special sessions.*]

And we hereby require you, within five days next ensuing the day on which you shall receive this precept, to order the several petty constables, or other peace officers within the said division, to affix and serve notices thereof in like manner as by law required for the general annual licensing meeting.

Given under our hands at the general annual licensing meeting above mentioned.

[*Justices' signatures.*]

— { To the petty constables and other peace officers of the parish of in the division of *N.* and to each of them. (17) Clerk's notice to petty constables.

By virtue of a precept from her Majesty's justices of the peace acting for the said division, present at the general annual licensing meeting, held at *N.* in and for the said division, to me directed, I do hereby require you forthwith to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel on some other public and conspicuous place within your district, the notice annexed (of which copies are herewith sent), that [eight] special sessions for the year ensuing will be holden in and for the said division on the respective days and at the place and hour therein mentioned for transferring and granting alehouse licences and certificates and licences for the sale by retail of beer, cider,

Ch. 5.—Transfer of Licences and

perry, wine, spirits, liqueurs and sweets under the Licensing Act, 1872, and other acts, and for transferring billiard licences; and that you also forthwith give a copy of such notice to or leave the same at the dwelling-house of every justice of the peace acting for the said division, and to every person keeping or intending to keep an inn or other licensed premises, or to apply for a licence for the sale of any of such liquors, or a transfer licence for billiards.

Dated this day of 187 .
J. B., clerk of the licensing justices
of the said division.

Division of ———.

(18) Notice
for church-
door, justices,
or parties.

Special Sessions for transferring Alehouse and other Licences.

Notice is hereby given that [eight] special sessions for the year ensuing will be holden in and for the said division, on the respective days hereinafter mentioned, at in the said division, at the hour of twelve at noon of each day, that is to say:—

On the day of next,

[Inserting the days as in the appointment No. 16.]

for transferring and granting licences and certificates for the following purposes:—

[Here insert them as in Form No. 1, ante, p. 68, adding,
and for transferring billiard licences.]

in the cases and in manner by law directed.

Dated at the day of 187 .
J. B., clerk of the licensing justices of the
said division.

(19) Notice
of intention
to apply for
permission to
transfer a
licence (35 &
36 Vict. c. 94,
s. 40,
subs. 2).

To the overseers of the poor and the superintendent of
police of the district of and to all whom it may
concern :

I, A. B., of, &c. [or We, the executors, &c. of the late
A. B., of &c., or I being the trustee of the property of A. B.,
of &c., a bankrupt, or the trustee in the matter of the liqui-
dation by arrangement of the affairs of A. B., of &c.] vic-
tualiser [or beerhouse-keeper, &c.] being authorized by virtue
of the licence granted to me [or him or her] at the general
annual licensing meeting [or special session] for the division
held at on the day of 187 , to sell by retail, to
be drunk or consumed on [or off] [or to keep a billiard table at]
the premises thereunto belonging, situate at [here describe the
situation of the house], known by the sign of the “ ,”
do hereby give notice, that it is my [or our] intention to
apply at the special session to be holden at in the
said division on the day of 187 , for permission
to transfer the above-mentioned licence to C. D. [state his
trade or occupation], now residing at in the parish of

in the county of _____ who has for six months last past
resided at _____ [or in the several parishes of _____] in the
county of _____ [or counties of _____] [or to us the said exe-
cutors, or to me the said trustee].

[If to another house in consequence of fire, &c., say here to
the premises situate, &c.]

[And if owner has changed, add, I hereby further state that
E. F., of &c., is now owner of the said house and premises.]

Given under my hand this _____ day of 187 _____

A. B. [or L. M., N. O., &c.]

This form is prescribed by the secretary of state. See it in
the "Appendix I."

(20) Transfer
under 9 Geo. 4,
c. 61, s. 4, by
indorsement
or otherwise.

This form is prescribed by the secretary of state. See it in
the "Appendix I."

(21) Grant of
licence under
sect. 14.

_____ } At a petty session of her Majesty's justices of the peace
to wit. } acting in and for the division of _____ in the said
county, held at _____ on the _____ day of 187 _____ :

(22) Tempo-
rary autho-
rity to sell
under 5 & 6
Vict. c. 44,
s. 1 (not pre-
scribed by the
secretary of
state).

We, being the majority of her Majesty's said justices of the
peace present at the said petty session, do hereby, by virtue of
the act of the 5th and 6th years of her Majesty, chapter 44, and
the other acts in that behalf, authorize C. D. to sell such intoxi-
cating liquors by retail in the house and premises mentioned in
the within licence [or certificate] as might heretofore be lawfully
sold or retailed therein, until the _____ day of _____ next, being
the next special session appointed for transferring and granting
licences in the said division.

Given under our hands and seals at the petty session above
mentioned.

[Justices' signatures and seals.*]

* This authority cannot be authenticated by the official seal referred to in
23 & 34 Vict. c. 29, s. 4, subs. 2, *ante*, p. 68.

CHAPTER VI.

APPEAL TO QUARTER SESSIONS AGAINST LICENSING
JUSTICES' REFUSAL TO RENEW OR TRANSFER A
LICENCE OR CERTIFICATE.

9 Geo. 4, c. 61.

Preliminary
observations.

THIS appeal, originally granted by 9 Geo. 4, c. 61, s. 27, in respect of licences for alehouses, and now applicable to *all* licences and certificates (see 35 & 36 Vict. c. 94, s. 74, *ante*, p. 24, definition of "licence," and 33 & 34 Vict. c. 29, s. 4, subs. 5, *ante*, p. 77), is preserved, that section being repealed only as to the right to appeal against the refusal to grant a *new* licence, which does not now exist. (See Chap. III. as to confirmation of grants, *ante*, p. 94.) Practically, therefore, the 9 Geo. 4, c. 61, s. 27, applies only to the refusal to renew and transfer licences under ss. 4 and 14 of that act, as amended and extended by the other acts.

There is now no appeal to quarter sessions with respect to the grant of *new* certificates under the Wine and Beerhouse Acts, 1869 and 1870, see *ante*, p. 76.

Appeal to be
made to
quarter ses-
sions:
Sect. 27.
Notice and
recognizance.

[Forms
Nos. 23, 24
and 25, *post*,
pp. 126, 127,
128.]

The 9 Geo. 4, c. 61, s. 27, enacts: "That any person who shall think himself aggrieved by any act of any justice done in or concerning the execution of this act, may appeal against such act to the next general or quarter sessions of the peace holden for the county or place [and not the recorder of a borough, 5 & 6 Will. 4, c. 76, s. 105] wherein the cause of such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done,

and in that case to the next subsequent session holden 9 Geo. 4, c. 61.
as aforesaid, and not afterwards,—provided that such Rect. 27.
person shall give to such justice notice in writing of
his intention to appeal, and of the cause and matter
thereof, within five days next after such act shall have
been done, and seven days at the least before such
session,—and shall within such five days enter into a
recognizance, with two sufficient sureties, before a
justice acting in and for such county or place as afore-
said, conditioned to appear at the said session, and to
try such appeal, and to abide the judgment of the
court thereupon, and to pay such costs as shall be by
the court awarded; and the court at
such session shall hear and determine the matter of
such appeal ; and in case the act appealed
against shall be the refusal to grant or to transfer any
licence, and the judgment under which such act was
done be reversed, it shall be lawful for the said court
to grant or to transfer such licence in the same manner
as if such licence had been granted at the general
annual licensing meeting or had been transferred at a
special session;—and the judgment of the said court
shall be final and conclusive to all intents and pur-
poses;—and in case of the dismissal of such appeal or
of the affirmance of the judgment on which such act
was done, and which was appealed against, the said
court shall adjudge and order the said judgment to be
carried into execution, and costs awarded to be paid,
and shall, if necessary, issue process for enforcing such
order:—provided that no justice shall act in the hear-
ing or determination of any appeal to the general or
quarter sessions as aforesaid from any act done by him
in or concerning the execution of this act:—provided
also, that when any cause of complaint shall have
arisen within any liberty, county of a city, county of a

Justices re-
versing de-
cision may
grant a trans-
fer of licence;

Certain
justices not
to hear
appeal.

Appeal in
liberties.

9 Geo. 4, c. 61.

Sect. 27.

town, city, or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved to appeal against any such act as aforesaid, if he shall think fit, to the quarter sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained."

See the schedule of repeals in 35 & 36 Vict. c. 94, *ante*, p. 19, for the extent of the repeal of this and the following two sections, 28, 29. No words need be expunged from either.

This section has been incorporated into the Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 10, which imposes penalties on licensed persons for harbouring thieves, &c. See Chap. IX.

A party "aggrieved" means a person immediately, and not consequentially, aggrieved (*Rex v. Justices of Middlesex*, 3 B. & Ad. 938; *Reg. v. Deane*, 2 Q. B. 96). See *ante*, pp. 62, 63, who is entitled to oppose the grant of a new licence; and p. 102, note (b), a *renewal* before the licensing justices.

The notice of appeal must be given to both the convicting justices, if more than one (*Reg. v. Justices of Cheshire*, 11 Ad. & Ell. 139; 9 L. J. (N. S.) M. C. 89). On the hearing of an appeal fresh evidence may be given by the appellant (*Reg. v. Pilgrim*, 40 L. J. (N. S.) M. C. 3; 23 Law T., N. S. 410).

The court of quarter sessions has no power to refuse to allow entry of appeal against refusal of certificate for licence by justices, on ground of non-compliance with rule of the sessions requiring appeals to be entered and grounds of appeal given to clerk of the peace three clear days before the first day of sessions, the requirements of 9 Geo. 4, c. 61, s. 27, having been complied with; and an order of sessions under 12 & 13 Vict. c. 65, s. 6, for payment of costs as on an appeal not entered or prosecuted, was quashed. (*Reg. v. Pawlett*, 29 L. T., N. S. 391).

Justices to bind parties to appear and give evidence on appeal.
Sect. 28.

The sections 28, 29, are as follow:—Sect. 28, "That when any person shall have given notice of his intention to appeal as aforesaid, and shall have entered into recognizance as hereinbefore directed, it shall be lawful for the justice before whom such recognizance shall have been entered into to summon any person whose evidence shall appear to him to be material, and to require such person to be bound in recognizance to appear at the said general or quarter session, and to

give evidence in such appeal;—and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognizance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to bring him before such justice, and if such person shall continue to refuse to enter into such recognizance, to commit him to the common gaol or house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognizance, or shall be otherwise discharged by due course of law.” Sect. 29, “That in every case where notice of appeal against the judgment of any justice in or concerning the execution of this act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party so having appealed, or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such sum by way of costs as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal;—and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid;—and that in every case in

9 Geo. 4, c. 61.
Sect. 28.

Court to ad-
judge pay-
ment of costs
in certain
cases.
Sect. 29.

Party
refusing to
pay costs.
Ib.

9 Geo. 4, c. 61.
Sect. 29.

which the judgment so appealed against shall be reversed it shall be lawful for such court, if it shall think fit, to adjudge and order that the treasurer of the county or place in and for which such justice whose judgment shall have been so reversed shall have acted on the occasion when he shall have given such judgment shall pay to such justice, or to whomsoever he shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put;—and the said treasurer is hereby authorized to pay the same, which shall be allowed to him in his accounts.”

The cases decided on this section, when it applied (before 35 & 36 Vict. c. 94) to summary convictions and orders under the 9 Geo. 4, c. 61, need not be referred to, having no application now (see them, Oke's “Synopsis,” 11th ed. Vol. I. p. 216). The 12 & 13 Vict. c. 45, s. 5, gives a general power to order costs to the successful party on all appeals, to be recovered in manner provided by 11 & 12 Vict. c. 43, sect. 27 of which provides for the costs being paid to the clerk of the peace and the recovery by distress warrant of a justice, and in default of distress imprisonment not exceeding three months.

Temporary
licence, pend-
ing appeal.

The 35 & 36 Vict. c. 94, s. 53, empowering the Commissioners of Inland Revenue to grant a licence pending an appeal against the justices' refusal to *renew* a licence, is given, *ante*, p. 105.

FORMS.

(28) Notice
of appeal
against
refusal to
renew or
transfer a
licence
(9 Geo. 4,
c. 61, s. 27).

To *J. S., J. P., J. L. and J. N.*, Esquires, four of her Majesty's justices of the peace acting for the licensing district *or* division of *N.*, in the [*county*] of *C.*

Whereas you, the above-named justices assembled at [an adjournment of] the general annual licensing meeting [*or* at a special session] of her Majesty's justices of the peace acting for the said licensing district *or* division, holden at _____ on the _____ day of _____ instant, for the purpose of renewing [and transferring] licences and certificates to persons to sell intoxicating liquors by retail under the Intoxicating Liquors Licensing

Acts and the Licensing Act, 1872, did refuse to renew [*or transfer*] to me, the undersigned *A. B.*, a licence to sell by retail [*describing the licence applied for as in the Form of Licence prescribed by the Secretary of State in Appendix I.*], which I now hold [*or is now held by C. D., of &c.*]:* Now I, the said *A. B.*, do hereby give you the said justices, and each of you, notice that I feel aggrieved by such refusal, and that it is my intention to appeal against the same to the next general quarter sessions of the peace to be holden at in and for the said county of *C.*, on the day of next: And I do hereby give you and each of you further notice that the ground, cause and matter of such appeal is [*here state the grounds, as,—that the renewing, or transferring, of the said licence would have been a convenience to the public, and an accommodation to the neighbourhood, and that there was no sufficient cause or reason arising out of my character or conduct, or any other just and sufficient reason why such licence should not have been renewed or transferred; and that such licence ought to have been renewed, or transferred, and ought not to have been refused*]; and that the refusal of you the said justices to renew [*or transfer*] the said licence as aforesaid, was illegal, erroneous and unjust.

Dated this day of 187 . *A. B.*

— } Be it remembered, that on the day of 187 , (24) Recogni-
to wit. } *A. B.*, of &c., *L. M.*, of &c., and *N. O.*, of &c., personally came before me the undersigned, one of her Majesty's
justices of the peace for the said [*county*], and severally acknowledged themselves to owe to our lady the Queen the several
sums following (that is to say), the said *A. B.* the sum of and the said *L. M.* and *N. O.* the sum of each, of good
and lawful money of Great Britain, to be made and levied in
their goods and chattels, lands and tenements respectively, to
the use of our said lady the Queen, her heirs and successors, if
he the said *A. B.* fail in the condition indorsed.

Taken and acknowledged on the day above mentioned, at
before me.

J. S.

The condition of the within-written recognizance is such, that
whereas *J. S.*, *J. P.*, *J. L.* and *J. N.*, Esquires, four of her
Majesty's justices of the peace acting for the division of *N.*, in
the [*county*] of *C.* assembled at, &c. [*proceed as in form* (23)
to the asterisk, by way of recital, and in the third per-
son*]: And whereas the said *A. B.* has given to the said justices
notice in writing of his intention to appeal and of the cause and
matter thereof: If, therefore, the said *A. B.* shall personally
appear at the next general quarter sessions of the peace to be
holden at in and for the said [*county*] of and try the
said appeal, and abide the judgment of the said court thereupon,
and pay such costs as shall be by the said court awarded, then
the said recognizance to be void, or else to stand in full force
and virtue.

Ch. 6.—Appeal against Refusal to renew Licence.

(25) Notice
of such re-
cognizance.

— } Take notice that you, *A. B.*, are bound in the sum of
to wit. } and your sureties, *L. M.* and *N. O.*, in the sum
of each, that you, *A. B.*, appear at the next general
quarter sessions of the peace to be holden at in and for
the [*county*] of and try an appeal made by you against
the refusal of certain justices of the said [*county*] assembled at
[an adjournment of] the general annual licensing meeting [*or*
at a special session] held at on the day of last,
to renew [*or transfer*] to you the said *A. B.* a licence for
[*shortly as in Form No. 23*], and abide the judgment of the
court thereupon, and pay such costs as shall be awarded; and
unless you the said *A. B.* try such appeal accordingly, the
recognizances entered into by you and your sureties before me
this day shall be forthwith levied on you and them.

J. S.,

Dated this Justice of the Peace for the said [*county*].
day of 187 .

CHAPTER VII.

REGISTER OF LICENCES AND CERTIFICATES GRANTED,
ETC.

THE 35 & 36 Vict. c. 94, s. 36, enacts,—“There shall be kept in every licensing district by the clerk of the licensing justices of that district a register, to be called the register of licences, in such form as may be prescribed by such justices (*a*), containing the particulars of all licences granted in the district, the premises in respect of which they were granted, the names of the owners of such premises, and the names of the holders for the time being of such licences. There shall also be entered on the register all forfeitures of licences, disqualifications of premises, records of convictions, and other matters relating to the licences on the register (*b*). ”

35 & 36 Vict.
c. 94.

Register of
licences to
be kept in
licensing
district ;
Sect. 36.

—to contain
records of
convictions,
&c. ;
Ib.

Every person applying for a new licence, or the renewal of a licence, shall state the name of the owner of the premises in respect of which such licence is granted or renewed (*c*), and such name shall be endorsed on the licence, and the person whose name is so stated shall, subject as hereinafter mentioned, be deemed for the purposes of this act to be the owner of the premises.

—owner's
name to be
stated ;
Ib.

A court of summary jurisdiction may, on the application of any person who proves to the court that he is entitled to be entered as owner of any premises in place of the person appearing on the register to be the owner, make an order substituting the name of the

—owner's
name may be
corrected on
register by
justices.
Ib.

35 & 36 Vict.
c. 94.

Sect. 36.

—Inspection
of register
by ratepayer,
owners of
licensed pre-
mises,
licensed per-
sons and
officers of in-
land revenue.
Ib.

—Penalty
for default.
Ib.

Fee to clerk
to justices for
registration.
Ib.

Definition of
the term
"owner."
37 & 38 Vict.
c. 49, s. 29.

applicant (*d*),—and such order shall be obeyed by the clerk of the licensing justices, and a corresponding correction may be directed to be made on the licence granted in respect of the premises of which such applicant claims to be the owner.

Any ratepayer, any owner of premises to which a licence is attached, and any holder of a licence within a licensing district shall, upon payment of a fee of one shilling,—and any officer of police, and any officer of inland revenue in such district, without payment,—shall be entitled at any reasonable time to inspect and take copies of or extracts from any register kept in pursuance of this section for such district;—and the clerk of the licensing justices and every other person who prevents the inspection or taking copies of or extracts from the same, or demands any unauthorized fee therefore, shall be liable to a penalty not exceeding five pounds for each offence (*e*).

The licensing justices may, if they think fit, cause the register kept in pursuance of this section to be divided into parts and assign a part to any portion of the licensing district (*f*);—and there shall be paid by each licensed person to the clerk in respect of such registration the sum or fee of one shilling for every licence granted or renewed" (*g*).

Any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises: provided, that when such estate or interest is vested in two or more persons jointly, one only of such persons

shall be registered as representing such estate or interest.

(a) The Form No. 26, *post*, p. 132, is recommended for this register. The Excise also keeps a register of licences under 1 Will. 4, c. 64, s. 1, and 23 Vict. c. 27, s. 16.

(b) By sect. 31 (set out in Chap. X., *post*), other matters are to be entered on the register; and see sect. 57 as to recording one of many convictions. Sect. 58 enacts,—“The registers of licences kept in pursuance of this act shall be receivable in evidence of the matters required by this act to be entered therein. Every endorsement upon a licence, and every copy of an entry made in the registers of licences in pursuance of this act, purporting to be signed by the clerk to the licensing justices and (in the case of a copy) to be certified to be a true copy, shall be evidence of the matters stated in such endorsement and entry, without proof of the signature or authority of the person signing the same.”

Sect. 58.
As to evidence of endorsements and register.

(c) See definition of “owner,” sect. 74, *ante*, p. 25, and in 37 & 38 Vict. c. 49, s. 29, *ante*, pp. 26, 130. The name of the owner is recommended to be given in the form of notice of application for a new licence, No. 4, *ante*, p. 69 (Chap. II.). It is placed in the body of the licence prescribed by the Secretary of State, see pp. 290—298.

(d) The “Court of Summary Jurisdiction” is not the licensing justices, but the magistrates empowered to convict for offences. See definition, *ante*, p. 28, and note (c) thereto, p. 83. Notice of the application ought to be given to the person whose name already appears on the register, before such an order is made.

(e) Vide Chap. XII. for the recovery of this penalty.

(f) As there may be several places of holding petty sessions in a licensing district at which convictions would take place of licensed persons, and the clerk of the licensing justices may not be the clerk of either or all of such petty sessions, the register, as far as record of convictions, forfeitures, &c. are concerned, should be kept by the petty sessions clerk of the place where they are made, and the licensing justices should be informed of them by means of the notice required to be given to their clerk by sect. 55, subsects. 4 and 5 (set out in Chap. X., *post*).

(g) These fees will be in addition to those authorized to be taken for a new or a renewal licence, or a transfer.

Ch. 7.—Register of Licences, &c.

FORM.

(36) Register
of licences
granted,
convictions
recorded.

Register of licences in the licensing district of .

* * Each parish or ward to have a separate heading; or the licences may be entered alphabetically according to the signs of the houses *or* the names of the holders, as most convenient to the licensing clerk, or for the purposes of dividing the register into parts under sect. 36.

1. Date of original or new Licence.	2. Person licensed.	3. Situation or Signs of Houses.	4. Description of Licence.	5. Name and Address of Owner.
6. Renewals, Transfers, Temporary Authority.	7. Orders of Exemption.	8. Record of Convictions, Forfeitures and Disqualifications.		

CHAPTER VIII.

HOURS FOR OPENING AND CLOSING PREMISES, AND
GRANTING EXEMPTIONS.

THE 35 & 36 Vict. c. 94, having repealed (as shown *ante*, pp. 19, 20) the provisions of the previous acts of 9 Geo. 4, c. 61, 3 & 4 Vict. c. 61, 11 & 12 Vict. c. 49, 18 & 19 Vict. c. 118, and 27 & 28 Vict. c. 64 (*a*), and the Wine and Beerhouse Acts, 1869 and 1870, as to the hours of opening and closing the different licensed premises (which were before very dissimilar), provided almost uniform provisions in relation to those hours for *all* houses in which intoxicating liquors were sold by retail, which came into force throughout the country on the 11th August, 1872. The new provisions were contained in 35 & 36 Vict. c. 94, ss. 23, 24 generally; ss. 27, 28 as to refreshment-houses; and ss. 26, 29 powers to grant exemptions to trades and on special occasions.

The 35 & 36
Vict. c. 94,
as to hours
of opening
and closing
houses, ap-
plies to ale-
houses, beer-
houses, &c.
alike.

(*a*) The previous provisions were,—

- 9 Geo. 4, c. 61 (in the Alehouse licence) as to the morning and afternoon divine service on Sundays, &c.
- 11 & 12 Vict. c. 49 (Alehouses and Beerhouses), ss. 1, 3, 4, 5, as to the mornings of Sundays, &c.
- 3 & 4 Vict. c. 61 (Beerhouses), s. 15, as to mornings and nights generally of week-days.
- 18 & 19 Vict. c. 118 (Alehouses and Beerhouses), ss. 2, 3, 4, as to afternoon hours of Sunday, &c.
- 27 & 28 Vict. c. 64 (Alehouses and Refreshment-houses as to certain hours on Sunday, &c. [now repealed except as to refreshment-houses where intoxicating liquors are *not* sold].

The repealed
provisions.

There was no limitation before 35 & 36 Vict. c. 94 as to hours of closing and opening alehouses on any other day than Sundays, &c., and the following mornings.

Alehouses
before 1872.

35 & 36 Vict.
c. 94.

But s. 24 of that Act defined the hours of closing *all* houses on Sundays, &c., in the metropolis and elsewhere ; imposed penalties for opening the houses or selling liquors during the prohibited hours, with the usual exceptions in favour of travellers, lodgers, and railway stations ; and also empowered the licensing justices for places beyond the four-mile radius from Charing Cross, &c., at the general annual licensing meeting, &c., after twenty-one days' public notice, to make an order altering the closing hours so as to restrict or enlarge the periods during which houses are to be open, with some exceptions.

Now, however, the Act of 1874 repeals the whole of s. 24 of the previous Act, and gives three scales, according to which licensed houses are to be closed, viz., one for houses within the metropolitan district, as defined by the Schedule (*ante*, p. 29), a second for the remaining houses within the metropolitan police district, and for those in towns or populous places, as defined in s. 32, *ante*, p. 30, and a third for all other places (sect. 3).

In the metropolis the houses may now remain open till half-past twelve instead of only till twelve, but there is no longer to be any exemption or further extension of the time in the case of houses in the neighbourhood of theatres (sect. 4). Houses to which the second scale applies are to close at eleven o'clock on week days, and those under the third scale at ten.

The penalty for infringing the Act as to the hours of closing remains the same, but the offence in question now includes allowing intoxicating liquors, *although purchased before the hours of closing*, to be consumed on the premises during closed hours (sect. 9). The exceptions in favour of travellers, lodgers, and railway stations are repeated, the first being more fully explained (sect. 10).

All premises in which intoxicating liquors are sold by retail shall be closed as follows ; (that is to say,)

Hours of closing premises licensed for sale of intoxicating liquors.

(1.) If situate within the metropolitan district, (note (a), p. 136,)—

27 & 28 Vict. c. 49, s. 3.

(a) On Saturday night from midnight until one o'clock in the afternoon on the following Sunday ; and

(b) On Sunday night from eleven o'clock until five o'clock on the following morning ; and

(c) On all other days from half an hour after midnight until five o'clock on the same morning ; and

(2) If situate beyond the metropolitan district and in the metropolitan police district, (note (b), p. 136,) or in a town or in a populous place as defined by this Act,—

(a) On Saturday night from eleven o'clock until half an hour after noon on the following Sunday ; and

(b) On Sunday night from ten o'clock until six o'clock on the following morning ; and

(c) On the nights of all other days from eleven o'clock until six o'clock on the following morning ; and

(3.) If situate elsewhere than in the metropolitan district or the metropolitan police district or such town or populous place as aforesaid,—

(a) On Saturday night from ten o'clock until half an hour after noon on the following Sunday ; and

(b) On Sunday night from ten o'clock until six o'clock on the following morning ; and

(c) On the nights of all other days from ten o'clock until six o'clock on the following morning.

Such premises wherever situate shall, save as herein-after mentioned, be closed on Sunday afternoon from

Ch. 8.—Hours for opening and closing

three or half-past two according as the hour of opening shall be one o'clock in the afternoon or half an hour after noon until six o'clock.

Such premises wherever situate shall be closed on Christmas Day and Good Friday and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Sunday, and the preceding days were respectively Saturday, but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday.

(a) The "Metropolitan District" is defined by the schedule to this Act, *ante*, p. 29.

(b) The following places are beyond the metropolitan district, and in the metropolitan police district,—

COUNTY OF MIDDLESEX.	
Acton	Hendon
Ashford	Heston
Bedford (East)	Hillingdon
Brentford (New)	Hornsey
Chiswick	Ickinham
Cowley	Isleworth
Cranford	Kingsbury
Drayton (West)	Laleham
Ealing	Littleton
Edgware (inc. Whitechurch)	Northalt
Edmonton	Norwood (Precinct)
Enfield	Perivale
Feltham	Pinner
Finchley	Ruislip
Fryern Barnet	Shepperton
Greenford	South Mimms
Hadley Monken	Staines
Hamptonwick (Liberty)	Stanmore (Great and Little)
Hampton (Town and Court)	Stanwell
Hanwell	Sunbury
Hanworth	Teddington
Harefield	Tottenham
Harlington	Twickenham
Harmondsworth	Wyford Abbey
Harrow	Uxbridge (township and chapelry)
Hayes	Willesden

COUNTY OF SURREY.

Addington
Banstead
Barnes
Beddington (Wallington ham-
let)
Carshalton
Cheam
Chessington
Clink Liberty
Coulston
Croydon
Cuddington
Epsom
Ewell (exclusive of part near
Walton)
Farley
Kew
Kingston-on-Thames (Ham-
with-Hatch hamlet, Hook
hamlet)
Long Ditton
Maldon
Merton
Mitcham
Morden
Mortlake
Moulsey (East)
Moulsey (West)
Penge
Petersham
Richmond
Roehampton
Sanderstead
Streatham
Sutton
Thames Ditton (including
hamlet of Ember, hamlet of
Tooting)
Warlingham
Weston (and hamlet of Clay-
gate)
Wimbledon
Woodmanstowe
Worster Park

COUNTY OF ESSEX.

Barking (Town ward, Chad-
well ward, Great Ilford
ward, Ripple ward)
Chigwell
Chingford
Dagenham

East Ham
Little Ilford
Loughton
Low Leyton
Waltham Abbey (Holyfield
hamlet, Sewardstone ham-
let, Upshire hamlet)
Waltham (Town hamlet)
Walthamstow
Wanstead
West Ham (Church Street
ward, Plaistow ward, Strat-
ford ward)
Woodford

COUNTY OF HERTFORD.

Aldenham
Bushey
Cheshunt
Chipping Barnet
Elstree
Northaw
Ridge
Shenley
Theobald Street (East Barnet)
Totteridge

COUNTY OF KENT.

Beckingham
Bexley
Bromley
Charlton
Chiselhurst
Crayford
Down
Eltham (including the hamlet
of Mottingham)
Erith
Farnborough
Foot's Cray
Hayes
Keston
Kidbrooke
Lee
Lewisham
North Cray
Orpington
Plumstead
St. Mary's Cray
St. Paul's Cray
Wickham (East)
Wickham (West)
Woolwich

Ch. 8.—Hours for opening and closing

The following Table shows at a glance the hours during which licensed houses may be OPEN for the sale of intoxicating liquors or refreshments, &c., according to their situation, subject to the exceptions in cases of exemption, special order of justices, &c., mentioned in 37 & 38 Vict. c. 49, ss. 5, 6, 11 :—

Situation of premises.	Open hours on SATURDAY, and days* before Christmas-day and Good Friday.	Open hours on SUNDAY, Christmas-day and Good Friday.	Open hours on all OTHER DAYS.
1. Within the Metropolitan District.	From 5 A.M. to 12 midnight.	From 1 P.M. to 3 P.M., and from 6 P.M. to 11 P.M.	From 5 A.M. to 12.30 A.M. (<i>half an hour after midnight.</i>)
2. Beyond the Metropolitan District, and within the Metropolitan Police District; or in a town or populous place.	From 6 A.M. to 11 P.M.	From 12.30 P.M. to 2.30 P.M., and from 6 P.M. to 10 P.M.	From 6 A.M. to 11 P.M.
3. Elsewhere than as above.	From 6 A.M. to 10 P.M.	From 12.30 P.M. to 2.30 P.M., and from 6 P.M. to 10 P.M.	From 6 A.M. to 10 P.M.

* Unless the day before Christmas-day is Sunday, in which case the open hours will be as on other Sundays.

The following Table shows at a glance the hours during which licensed houses are to remain CLOSED in each of the prescribed districts, subject to the exceptions in sects. 5, 6 and 11, *post*.

	Saturday.	Sunday.	Monday.	All other days.
1. Within the Metropolitan District.	12 Midnight to ...	1 P.M.; 3 P.M. to 6 P.M.; 11 P.M. to ...	5 A.M. ...	12.30 A.M. to 5 A.M.
2. Beyond the Metropolitan District and within the Metropolitan Police District, or in a town or populous place.	11 P.M. to ...	12.30 P.M.; 2.30 P.M. to 6 P.M.; 10 P.M. to ...	6 A.M. ...	11 P.M. to 6 A.M.
3. Elsewhere than as above.	10 P.M. to ...	12.30 P.M.; 2.30 P.M. to 6 P.M.; 10 P.M. to ...	6 A.M. ...	10 P.M. to 6 A.M.

Any person who, during the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of intoxicating liquors, or allowing intoxicating liquors, although purchased before the hours of closing, to be consumed in such premises, shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds (a).

87 & 88 Vict.
c. 49, s. 2.

Nothing in this act or in the principal act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to bonâ fide travellers or to persons lodging in his house (b): provided, that no person holding a six-day licence shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.

Saving as
to bonâ fide
travellers
and lodgers.
Ib. s. 10.

Nothing in this act contained as to hours of closing shall preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad (c).

If in the course of any proceedings which may be taken against any licensed person for infringing the provisions of this act, or the principal act, relating to closing, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a bonâ fide traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a bonâ fide traveller, and further that the defendant took all reasonable precautions to ascertain whether or not the purchaser was

37 & 38 Vict.
c. 49, s. 10.

such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a *bonâ fide* traveller, it shall be lawful for the justices to direct proceedings to be instituted against such purchaser under the twenty-fifth section of the principal act.

A person for the purposes of this act and the principal act shall not be deemed to be a *bonâ fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare (*d*).

(*a*) This will not apply to the opening of any premises for the sale of *non-intoxicating* liquors or of refreshments,—nor to grocers and other shopkeepers where other articles than *intoxicating* liquors are sold, who can keep open at all hours for such purposes,—or to sales to travellers or lodgers or railway travellers in any licensed house. *Vide* sect. 62, as to evidence of sale of liquor and other pertinent observations, Chap. IX., pp. 157, 163, *post*. See the cases as to selling or keeping open during prohibited hours, with the other cases as to travellers and lodgers in note (*b*), *infra*.

(*b*) This exemption as to travellers and lodgers applies to the whole week, Sundays included; but apparently by an oversight it does not extend to persons or houses or shops licensed to sell intoxicating liquor *not* “to be consumed on the premises,” who will strictly be liable to the penalty in this section. See sect. 25 as to penalty on travellers and other persons found in houses during closing time (Chap. XI.).

(*c*) This exception of railway stations was previously in the 27 & 28 Vict. c. 64, s. 10, and in no other act, but then it applied to a sale there “between the hours of one and four o’clock in the morning of exciseable liquors or refreshments.” [It is still applicable to refreshment-houses in which intoxicating liquors are not sold; see Chap. XIV.] See cases of *Fisher v. Howard*, and *Copley v. Burton*, in note (*d*), *infra*.

Proof of exception as to
“travellers.”
11 & 12 Vict.
c. 43, s. 14.

(*d*) *Proof of exception as to “Travellers,” &c.*] It should be observed at the outset, that before the new act, 35 & 36 Vict. c. 94, it had been decided that the burthen of proving that the persons served with beer, &c. were not travellers was cast upon

the informer. The decisions on this point were given upon sect. 14 of the 11 & 12 Vict. c. 43 (the Summary Jurisdiction Act, 1848) which enacts (*inter alia*), "that if the information or complaint in any such case shall negative any exemption, exception, proviso or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same;"—as to its application to the repealed acts of 11 & 12 Vict. c. 49 and 18 & 19 Vict. c. 118, the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 42, which prohibited the sale of beer, &c. on Sundays, "except as refreshment for travellers" or in other like words in the enacting clause. *Taylor v. Humphreys* (34 L. J. (N. S.) M. C. 1; 11 Law T., N. S. 376), decided that these words which accompanied the description of the offence were not an "exception" within the meaning of this proviso of 11 & 12 Vict. c. 43, s. 14, and that the burthen of proof, that the parties were not travellers, was on the prosecution. This decision was confirmed in the following cases:—*Davis v. Scrase* (38 L. J. (N. S.) M. C. 79; 19 Law T., N. S. 789), *Morgan v. Hedger* (40 L. J. (N. S.) M. C. 13), and *Copley v. Burton* (39 L. J. (N. S.) M. C. 141; 22 Law T., N. S. 888); that of *Davis v. Scrase*, the principal case, being that the information did not negative any exception, &c. within 11 & 12 Vict. c. 43, s. 14, *supra*. The enactment of subs. 4 of sect. 51 of 35 & 36 Vict. c. 94 (see it in Chap. XII.) is similar to that, with this addition,—that an "exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence . . .", "need not be specified or negated in the information;" and therefore in our opinion the burden of proof is now on the defendant.

In *Atkinson v. Sellers* (5 C. B., N. S. 442; 28 L. J. (N. S.) M. C. 12; 32 Law T. 178), the term "travellers" was held to include persons who travelled a round for *pleasure* and stopped at a public-house distant five miles from the place where they started from. Each case must, however, be judged by its particular facts; but Cockburn, C. J., said, that "absence from home, whether on pleasure or business constituted a traveller," and this is the view also taken by the Court of Common Pleas in *Taylor v. Humphreys* (30 L. J. (N. S.) M. C. 242; 4 Law T., N. S. 514); but his going abroad must not be for excessive drinking. *Peache v. Colman* (35 L. J. (N. S.) M. C. 118) somewhat confirmed the case of *Taylor v. Humphreys*. The appellant kept a public-house outside the S. Railway Station, which was a mile from S. On Whit-Sunday, after the arrival of several excursion trains, and before half-past twelve in the day, several persons were in his house drinking; two were from S.; but the only evidence as to the appellant's knowledge that they were there was his remark (upon his attention being called to them as they left), that he was not aware persons from S. were there :

37 & 38 Vict.
c. 49.

35 & 36 Vict.
c. 94, s. 51.

Cases on
"travellers"
and "open-
ing."

37 & 38 Vict.
c. 49.

Cases on
"travellers"
and "open-
ing."

the court held that the justices were not bound to convict him on a charge under 11 & 12 Vict. c. 49, s. 1, for having his house open illegally. A person who has taken a ticket at a railway station, and is about to start by a railway train from that station, is a "traveller" (*Fisher v. Howard*, 10 Cox, C. C. 144; 34 L. J. (N. S.) M. C. 42; 11 Law T., N. S. 373. See also *Copley v. Burton*, *infra*). With respect to the offence of "opening" the house at prohibited hours, the case of *Tennant v. Cumberland* (1 E. & E. 401) also decided that evidence of facts (persons drinking in the house when closed) which prove a sale within the house, does not of itself support a charge of opening the house for the sale of beer; and that the fact of the defendant being seen sitting with another man, having a pitcher and a tumbler on the table containing ale, from which both drank, is sufficient to justify the magistrates in inferring that there had been a sale of beer; and in convicting the defendant of selling beer within the prohibited hours. In *Cates v. South* (1 Law T., N. S. 365), the same court (Q. B.) has since decided that justices are not warranted in convicting an inn-keeper for "opening his house for the sale of spirit" under 11 & 12 Vict. c. 49, merely because it is shown that the front door of the inn was open after twelve o'clock on Saturday night, although persons were there, and one glass contained spirit; Cockburn, C. J., stating that the landlord was not bound to turn his customers out when the clock struck twelve, and the court appeared to have considered that the charge must be established by direct evidence of a sale after twelve o'clock at night, a distinct opening after that hour, or some act on the part of the landlord, &c., which would show that the house was wilfully kept open after that hour for the purpose of inviting persons in. But now see 37 & 38 Vict. c. 49, s. 9, *post*, p. 146. In *Overton v. Hunter* (1 Law T., N. S. 366), where the only fact found was, that the defendant had given a supper at his own expense to his own people and a few neighbours, who were not travellers or lodgers, after eleven o'clock, and a glass of whiskey, but there was no sale in fact of any liquors; the court held, there was not a shadow of a pretence for a conviction. In *Finch v. Blundell* (5 Law T., N. S. 672) where a policeman knocked at the front door of a beer-house within the prohibited time, and was admitted; in the parlour two lodgers were sitting, the room was full of tobacco smoke and the table wet with beer; the policeman went to a closet at the back of the premises, the door of which was pulled open, and in which were two men who lived in the neighbourhood, one having a pot of fresh-drawn beer which he tried to conceal. Both outer doors were found shut, and the men were not seen to enter the house: it was held that there was evidence, on which the justices properly convicted the beer-house keeper of opening his house for the sale of beer contrary to 11 & 12 Vict. c. 49, s. 1 (see *Smith v. Vaux*, 5 Law T., N. S. 46). In *Petherick v. Sargent* (5 Law T., N. S. 48), it

was decided that beer given gratuitously by the landlord is not a "sale." See 37 & 38 Vict. c. 49, s. 30, *post*, p. 147. 37 & 38 Vict.
c. 49.

A person who walked on a Sunday to a Spa two and a half miles distance from his residence for the purpose of drinking the mineral water for the benefit of his health, and was supplied with ale at an hotel at the Spa before 12.30 p.m. was a traveller within the exception in 11 & 12 Vict. c. 49, s. 1 (*Peplow*, app., *Richardson*, resp., L. R., 4 C. P. 168).

A. was charged before justices, under 11 & 12 Vict. c. 49, with having opened his house for the sale of wine and beer on Sunday before half-past twelve o'clock. He kept a refreshment-room communicating with a railway station. He had a notice thereon as to the penalties incurred in case of persons not travellers having refreshments during the prohibited hours; and he ordered his servants to ask persons seeking to be supplied with refreshments if they were going by train. Eight persons were in the room within the prohibited time, six of them had been questioned, but the servants neglected to question two who came in during the absence of A. Of the eight persons four were strangers, who went off by a train which started shortly after their entering the room, the others resided about a quarter or half a mile off, and three of them took tickets and went off by the train, whilst the fourth had accompanied his son who went by it. The justices having convicted A. for supplying liquors during the prohibited hours, the Court held the conviction wrong and quashed it, intimating that in future in quashing a conviction of this kind they would do so with costs (*Copley v. Burton*, 39 L. J., M. C. 141).

The keeper of licensed premises having been charged with opening his premises for sale of intoxicating liquors during prohibited hours, and persons having been shown to have been supplied with liquor on his premises during such hours; it was proved that an attendant was placed near the premises to prevent any but *bonâ fide* travellers entering, and that no one was admitted who did not state that he had come more than three miles, and that notices were posted on premises that none but travellers could be admitted, and that during the hours in question none were admitted who did not represent themselves as *bonâ fide* travellers:—Held, that the onus of showing that the persons came within the exception lay on defendant. *Quære*, whether proof on defendant's part of *bonâ fide* though mistaken belief that the persons were travellers would have been sufficient (*Roberts v. Humphreys*, L. R., 8 Q. B. 483; 29 L. T., N. S. 387; 42 L. J., M. C. 147).

The hours must be regulated according to the mean time of the place where the offence is committed, and not by Greenwich time How time
regulated. (*Curtis v. March*, 23 J. P. 665).

Local authorities sometimes have by other enactments power to exempt houses from the hours as to

35 & 36 Vict.
c. 94.

closing in respect of certain trades and on special occasions, viz., by sects. 26 and 29 of 35 & 36 Vict. c. 94, and sects. 5 and 6 of 37 & 38 Vict. c. 49, which are as follow :—

Exemption
from closing
alehouses and
refreshment-
houses
by order of
local autho-
rity in respect
of markets,
trades.
Sect. 26.
Theatres.

The local authority of any licensing district [*defined*, p. 26], upon the production of such evidence as such authority may deem sufficient to show that it is necessary or desirable so to do for the accommodation of any considerable number of persons attending any public market, *or* following any lawful trade or calling, may grant, if such authority think fit, to any licensed victualler or licensed keeper of a refreshment-house, in respect of premises in the immediate neighbourhood of such market, *or* of the place where the persons follow such lawful trade or calling, an order exempting such persons from the provisions of this act, [*i. e.* sect. 24, now 37 & 38 Vict. c. 49, s. 3] with respect to the closing of his premises *on such days and during such time*, except between the hours of one and two of the clock in the morning as may be specified in such order (*a*).

Hours.
Ib.

Holder not
liable to
penalty.
Ib.

The holder of an order under this section shall not be liable to any penalty for not closing his premises on such days and during such time as may be specified in such order ;—but he shall not be exempt from any other penalty under this or any other act, or otherwise.

Notice to be
affixed to
premises.
Ib.

A notice in such form as may be prescribed by the local authority, stating the days and hours during which the premises are permitted to be open under such order of exemption, shall be affixed and kept affixed in a conspicuous position outside the premises (*b*) ;—and if the holder of the order of exemption make default in affixing or in keeping affixed such notice in

manner aforesaid, during any part of the time for which his exemption is granted, he shall be liable to pay a penalty not exceeding five pounds (*c*).

35 & 36 Vict.
c. 94.

Penalty for
default.

Every person who keeps affixed to his premises any such notice when he does not hold an order under this section, shall be liable to a penalty not exceeding ten pounds (*c*).

Sect. 26.

Falsely affix-
ing notice.

1b.

Any such local authority as aforesaid may at any time, if it seem fit to them, withdraw an order under this section, or alter the same by way of extension or restriction, as such authority may deem necessary or expedient, so however as not to render any person liable to any penalty for anything done under such order before the holder was informed of such withdrawal or alteration (*d*).

Withdrawal
of order, or
altering same
1b.

The following persons and bodies of persons shall be deemed to be local authorities of licensing districts for the purposes of this act ; that is to say,

Definition of
"local author-
ity" for
granting
orders.

(1.) In the metropolitan police district, the commissioner of police for the metropolis, subject to the approbation of one of her Majesty's principal secretaries of state :

(2.) In the city of London and the liberties thereof, so far as they are not included in the metropolitan police district (*e*), the commissioner of city police, subject to the approbation of the lord mayor of the said city :

(3.) In any other place, two justices of the peace in petty sessions assembled" (*f*).

An exemption from the above-mentioned hours of closing shall not be granted in respect of premises in the neighbourhood of a theatre, for the accommodation of persons attending the same, and so much of the twenty-sixth section of the principal act as provides

Exemptions
as to theatres
repealed.
37 & 38 Vict.
c. 49, s. 4.

for the granting of an order making such exemption shall be repealed.

Exemptions
as to beer-
houses.

37 & 38 Vict
c. 49, s. 5.

The grant of an order of exemption under the said twenty-sixth section amended as aforesaid may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or licensed keeper of a refreshment-house.

Power to
vary on Sun-
day afternoon
hours of
closing pre-
mises for sale
of intoxi-
cating liquors.

Ib. s. 6.

Notwithstanding anything in this or in any local act contained, the licensing justices may, if they think fit, as respects premises in which intoxicating liquors are sold, when situate in any place beyond the metropolitan district, for the purpose of accommodating the hours of closing on Sunday, Good Friday, and Christmas-day to the hours of public worship in such place, by order direct that such premises shall remain closed until one o'clock in the afternoon instead of half an hour after noon, and in that case such premises shall be closed in the afternoon from three until six o'clock, instead of from half-past two until six o'clock.

Ib.

Any order made by the licensing justices under this section shall not come into operation until the expiration of one month after the date thereof, and shall be advertised in such manner as the licensing justices direct, and shall be in force until the same is revoked; the expense of any such advertisement may be defrayed in like manner as the expenses of advertising the sittings of such justices are defrayed.

Penalty for
infringing act
as to hours of
closing.

Ib s. 9.

Any person who, during the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of

intoxicating liquors, or allows any intoxicating liquors although purchased before the hours of closing to be consumed in such premises, shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

No person keeping a house licensed under this or the principal act shall be liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends *bonâ fide* entertained by him at his own expense.

Person not to be liable for supplying liquor to private friends without charge.
37 & 38 Vict. c. 49, s. 30.

(a) *Vide* Form of Order, No. 31, *post*, p. 152.

(b) See Form of Notice to be affixed on premises at foot of Order No. 31, *post*, p. 152.

(c) *Vide* recovery of this penalty, Chap. XII., *post*.

(d) The order should be withdrawn in the same way as it was issued. The withdrawal order can be readily framed from the Form No. 31.

(e) This refers to the borough of Southwark.

(f) These two justices need not necessarily be the licensing justices; and the order may be made at any petty sessions held for the division or district in which the licensed premises are situated.

Sect. 29. "If any licensed victualler or keeper of a refreshment-house in which intoxicating liquors are sold (a), applies to the local authority (b) of a licensing district for a licence exempting him from the provisions of this act relating to closing of premises on any special occasion or occasions, it shall be lawful for such local authority, if in his discretion he thinks fit so to do, to grant to the applicant an occasional licence exempting him from the provisions of this act relating to closing of premises *during certain hours*, and *on the special occasion or occasions* to be specified in the licence (c);—and no licensed victualler or keeper of a refreshment-house to whom an occasional licence has been granted under this section shall be subject to any

Local authority may grant occasional licences exempting from provisions relating to closing during certain hours.
35 & 36 Vict. c. 94, s. 9.

35 & 36 Vict.
c. 94.

Sect. 29.

Further
exemptions
as to beer-
houses,
37 & 38 Vict.
c. 49, s. 5.

penalty for the contravention of the provisions of this act relating to the closing of premises during the time to which his occasional licence extends, but he shall not be exempted by such occasional licence from any penalty to which he may be subject by any other provision of this or any other act of parliament."

The grant of a licence under the twenty-ninth section of the principal act may be made to any person licensed to sell beer or cyder by retail, to be consumed upon the premises, as well as to any licensed victualler or keeper of a refreshment-house in which intoxicating liquors are sold.

(a) Sect. 26, *ante*, p. 144, omits the words inserted here of "in which intoxicating liquors are sold;" but it applies to the same houses.

(b) The "local authority" is the same as stated in sect. 26, *ante*, p. 144.

(c) The previous enactment on this subject was 27 & 28 Vict. c. 64, s. 7, which still applies to premises where intoxicating liquors are *not* sold (see Chap. XIV.). This section, it is apprehended, applies to these amongst other special occasions,—public fêtes, athletic and other sports, flower shows, horse races, &c., and probably to "certain hours" of fast or thanksgiving days. *Vide* Form of Occasional Licence, No. 32, *post*, p. 153. For public balls and dinners occasional licences are granted under 25 Vict. c. 22, s. 13, and 27 & 28 Vict. c. 18, s. 5, in Chap. XVII.

Special enact-
ments as to
refreshment-
houses :

Intoxicating
liquors not
to be drunk
at refresh-
ment-house
(not so
licensed)
during the
hours when
the house
would be
closed if it
were an inn.

35 & 36 Vict.
c. 94, s. 27.

As to refreshment-houses, the 35 & 36 Vict. c. 94, contains the following special enactments :—

Sect. 27. "No intoxicating liquor shall be consumed upon premises licensed as a refreshment-house but *not* for the sale of any intoxicating liquor (a) during the hours during which the same premises would, if they were the licensed premises of licensed victuallers, be closed by law for the sale and consumption of intoxicating liquor (b).

If any person licensed to keep such refreshment-

house allows any intoxicating liquor to be consumed on the premises in contravention of this section, he shall be liable for the first offence to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds" (c).

35 & 36 Vict.
c. 94.

Penalties.
Sect. 27.

(a) These houses are those having the excise licence only, viz., coffee-shops open after 10 p.m. and before 5 a.m. (23 Vict. c. 27, s. 6; 24 & 25 Vict. c. 91, s. 8). See also 27 & 28 Vict. c. 64, s. 5, in Chap. XIV.

(b) See 37 & 38 Vict. c. 49, s. 3, as to these hours, *ante*, p. 134, which are to be subject to variation by the licensing justices.

(c) *Vide* Chap. XII. for the mode of recovery of penalty.

Sect. 28. "Every refreshment-house in respect of which a licence is granted for the sale therein by retail of foreign wine, upon which licence an abatement of duty has been allowed under section nine of the act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-one, intituled 'An Act to amend the Laws relating to the Inland Revenue' (a), shall be closed every night at ten of the clock,—and where other licensed premises in the same place are required by or in pursuance of this act to close at nine o'clock at night, at nine of the clock (b);—and if any person keeping any such refreshment-house as is mentioned in this section sells or exposes for sale in such refreshment-house, or opens or keeps open any such refreshment-house for the sale of intoxicating liquors during the time that such house is directed to be closed by this section, or during such time as aforesaid allows any intoxicating liquor to be consumed on such premises, he shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds" (c).

Amendment
of law as to
refreshment-
houses.
Ib. s. 28.

[24 & 25 Vict.
c. 91, s. 9.]

To be closed
at ten at
night, or (if
other houses
so) at nine.
Ib. s. 28.

Penalty in
default.
Ib.

(a) The 24 & 25 Vict. c. 91, s. 9, provides that where a person has taken out a licence to keep a refreshment-house, not being a

24 & 25 Vict.
c. 91, s. 9.

35 & 36 Vict.
c. 94. house open after ten o'clock at night, shall obtain a licence under 23 Vict. c. 27, to sell therein by retail foreign wine, he is to be allowed an abatement of duty according to a stated scale; but he must not keep open his house as a refreshment-house or sell wine or other refreshment after ten o'clock at night; he is to be deemed to keep such house without a licence, or have sold wine without licence, and forfeit the penalties imposed therefor by sects. 9, 19 of the 23 Vict. c. 27; but this licence does not require a magistrate's certificate.

(b) This applies to all the present and future licensed refreshment-houses indicated which sell wine, and must now be read in connection with 37 & 38 Vict. c. 49, s. 3, *ante*, p. 135.

(c) See sect. 62 as to evidence of sale and the mode of recovery of penalties, in Chap. IX., p. 157. And as to the record of convictions, see *post*, pp. 193, 194.

Closing Licensed Premises in case of Riot.

Power of
justices to
close licensed
premises in
case of riot.
Sect. 23.

35 & 36 Vict. c. 94, s. 23, enacts, "Any two justices of the peace acting for any county or place where any riot or tumult happens or is expected to happen may order every licensed person in or near the place where such riot or tumult happens or is expected to happen to close his premises during any time which the justices may order;—and any person who keeps open his premises for the sale of intoxicating liquors during any time at which the justices have ordered them to be closed shall be liable to a penalty not exceeding fifty pounds;—and it shall be lawful for any person acting by order of any justices to use such force as may be necessary for the purpose of closing such premises."

Penalty.
House to be
closed by
force.

The power to close houses in these cases was previously given as to alehouses by 9 Geo. 4, c. 61, s. 20; beerhouses, 1 Will. 4, c. 64, s. 11; refreshment-houses, 23 Vict. c. 27, s. 28 (all repealed). Vide Chap. XII. for recovery of the penalty. The last enactment is entirely new. See Form of Order, No. 27, *post*, p. 151.

Premises, and granting Exemptions.

151

FORMS.

35 & 36 Vict.
c. 94.

To the keepers of inns, beer-houses, refreshment-houses, confectioners, eating-house keepers, and all other persons licensed for the sale of intoxicating liquors (whether to be consumed on the premises or not) in the parish of _____, in the [county] of _____, and to each and every of them.

(27) Justices' order to close houses in case of riot (35 & 36 Vict. c. 94, s. 23).

It appearing to us, the undersigned, two of her Majesty's justices of the peace acting in and for the said [county] of _____, that there is a riot or tumult [or that a riot or tumult is expected to happen] in the parish of _____ aforesaid, we do hereby, in pursuance of section 23 of the Licensing Act, 1872, order and direct that all and every person licensed under the statutes in that behalf to keep and keeping inns, beer-houses, &c. within the said parish of _____ shall close his premises from the hour of _____ on this day, to the hour of _____ on next [or on the day of _____ next], of which you and each of you are to take notice accordingly.

Given under our hands and seals, this _____ day of _____ 187 _____, at _____, in the [county] aforesaid.

[Justices' signatures and seals.]

This may be by a separate notice adapted from the Notice of the Annual Licensing Meeting, No. 3, ante, p. 69, or added to it. If added to it, the additional matter may be:—“ And notice is hereby further given that at the said [adjournment of the said] general annual licensing meeting the licensing justices there assembled will take into their consideration the expediency of altering the closing hours for licensed premises pursuant to the provisions of sect. 6 of the Licensing Act, 1874.”

(28) Notice to consider alteration of hours of closing houses (37 & 38 Vict. c. 49, s. 6).

At the [adjourned] general annual licensing meeting, &c. [caption as in Licences, in “Appendix I”], duly summoned and held after due notice that the closing hours of licensed premises would be considered thereat:

(29) Order of licensing justices altering the hours of closing houses (ib.).

We the undersigned, the majority of the said justices assembled at the said [adjourned] meeting, upon due consideration, do by this our order, made in pursuance of sect. 6 of the Licensing Act, 1874, alter the closing hours therein provided of all licensed premises [in the parish of _____] in the said division in which intoxicating liquors are sold or exposed for sale by retail, and do direct that from and after the _____ day of _____ next [one month from date of order] all the licensed premises [in the parish of _____] in the said division shall be closed on Sunday, Christmas-day or Good Friday, during the whole day before the

Ch. 8.—Hours for opening and closing

37 & 38 Vict.
c. 49, s. 6.

hour of one, and between the hours of three and six in the afternoon, and after the hour of ten o'clock at night.*

And we direct that this order shall be advertised by our clerk [twice] in the *Gazette*, and a copy thereof affixed and served in the same manner as is prescribed by law for giving notice of the holding of a general annual licensing meeting; and that its purport be indorsed on every licence when granted or renewed or transferred.

Given under our hands and seals at the [adjourned] general annual licensing meeting [or special sessions] aforesaid.

[Justices' signatures and seals.]

Division of

(30) Adver-
tisement
of the last
order (Ib.).

Alteration of closing hours for inns, beerhouses, &c.

Notice is hereby given, that the licensing justices of the said division assembled at the [adjourned] general annual licensing meeting, held this day at _____, did, after due notice and upon due consideration, make the following order:—

[Here set out the order No. 29 verbatim, from "We" to the asterisk*.]

Dated the _____ day of _____, 187 .
_____, clerk of the licensing justices.

(31) Order of
exemption
from closing
hours (35 &
36 Vict. c. 94,
s. 26).

At a petty sessions of her Majesty's justices of the peace for the division of _____, in the [county] of _____, held at _____, on the _____ day of _____, 187 :

It having been duly shown to us the undersigned, two of the justices assembled at the said petty sessions (being the local authority in this behalf), that it is necessary and desirable so to do for the accommodation of a considerable number of persons attending the public market [or persons following their lawful trade and calling of _____ at _____]; at _____ in the said division, We do, in pursuance of section 26 of the Licensing Act, 1872, order that *A. B.*, of _____, in the said division, a licensed victualler, and keeping the inn known by the sign of the _____ [or a licensed keeper of a refreshment-house], situated in the immediate neighbourhood of the said market [or _____], shall be exempt from the provisions of the said act with respect to the closing of his premises, and need not close such premises between the hours of _____ and _____ of the clock and _____ and _____ of the clock on the morning of any day (except Sunday, Christmas-day and Good Friday, or any day duly appointed for a public fast or thanksgiving), [or if the hours on Sunday, &c. are enlarged, state so, or if the order is for a whole or a fractional part of a day say, on the _____ day of _____, being a duly appointed day of

thanksgiving], from the day of the date hereof until this order shall be withdrawn or altered as authorized by the said act [*or until the next general annual licensing meeting, as the justices may determine*]: provided that this order shall not extend to other persons than those above described.

35 & 36 Vict.
c. 94.
Ib. s. 28.

The said is hereby required to affix, and keep affixed, in a conspicuous position outside the licensed premises, a board, on which shall be painted, in legible letters not less than [one inch] in height, a notice in the following form :—

“Notice, pursuant to 35 & 36 Vict. cap. 94, sec. 26.

“These premises are permitted to be open between the hours of and for the accommodation of persons attending the [*or , as the case may be*].”

Given under our hands and seals at the petty sessions aforesaid.

[*Justices' signatures and seals.*]

At a petty sessions, &c. [*as in the last form, No. 31*].

We the undersigned, two of the justices assembled at the said petty sessions (being the local authority in this behalf), upon the application of *A. B.*, of in the said division, a licensed victualler and keeping the inn known by the sign of the “ ” [*or a keeper of a refreshment-house in which intoxicating liquors are sold by retail*], situate in street, in there, do hereby, in pursuance of sect. 29 of the Licensing Act, 1872, grant to the said *A. B.* this occasional licence exempting him from the provisions of the said act relating to closing of premises during the hours and on the special occasion [*or occasions*] hereunder specified (that is to say) :—during the hours between in the afternoon of the day of and the hour of on the following morning [*or as the case may be*], in order that the said *A. B.* may be enabled to sell intoxicating liquors on the occasion of a ball [*or as the case may be*] to be then held in the said house.

(32) Occasional licences exempting from act as to closing hours on a special occasion (Ib. s. 29).

Given under our hands and seals at the petty sessions aforesaid.

[*Justices' signatures and seals.*]

CHAPTER IX.

PENALTIES, &C. INCURRED BY LICENSED PERSONS FOR
OFFENCES.

Accessories to
all offences
punishable as
principals.
11 & 12 Vict.
c. 43, s. 5.

BEFORE giving the enactments in the Licensing Act, 1872, and other previous acts, attention should be called to the 11 & 12 Vict. c. 43, s. 5, which enacts :—
“Every person who shall *aid, abet, counsel or procure* the commission of any offence, which is *or hereafter* shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or *before or after* his conviction,—and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable,—and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling or procuring may have been committed.”
(See Oke’s “Synopsis,” 11th ed., vol. i., p. 129.)

- (1) *Offences punishable under the Licensing Act, 1872, infra.*
- (2) *Offences punishable under other Acts, p. 181.*

35 & 36 Vict.
c. 94.

- (1) *Offences punishable under the Licensing Acts, 1872, 1874.*

Preliminary
observations.

Offenders prosecuted under this act cannot be punished under any other (sect. 59, *ante*, p. 24). The present act does not, therefore, operate as a repeal of other acts imposing different penalties or punishments for the same offences.

It should be premised, once for all, that, if necessary, reference should be made to Chap. I. for the definitions of the terms used in this division of this Chapter,—"sale by retail," "intoxicating liquor," "licence," "licensed person," &c. (see pp. 24—31).

35 & 36 Vict.
c. 94.

—Definitions
of terms be-
fore given ap-
plicable.

Sect. 62, as to evidence of sale given in note (a) to sect. 3, *infra*, and the decisions under sect. 13, *post*, p. 163, as to the licensed person's liability for his servant's acts, also bear upon most of the offences in this division of the Chapter.

As to recording the convictions, forfeitures, disqualifications, compelling production of licences, &c. reference must be made to Chap. X. for the provisions in detail; and for the mode of recovery of all penalties and costs,—the proof of a previous conviction,—the competency of the defendant and his wife to give evidence,—the mitigation of penalties, &c., &c., to Chap. XII.

—Recording
convictions
and recovery
and mitiga-
tion of
penalties.

Illicit Sales.

Sect. 3. "No person shall sell *or* expose for sale (a) by retail any intoxicating liquor without being duly licensed to sell the same, *or* at any place where he is not authorized by his licence to sell the same. Any person selling *or* exposing for sale by retail any intoxicating liquor which he is not licensed to sell by retail,—*or* selling or exposing for sale any intoxicating liquor at any place where he is not authorized by his licence to sell the same (which now includes selling, &c. at fairs and races without an occasional licence, 37 & 38 Vict. c. 49, s. 18, *post*, p. 283),—shall be subject to the following penalties; that is to say,

Prohibition
of sale of
intoxicating
liquors with-
out licence,
or in places
not autho-
rized by
licence.
Ib. s. 3.

- (1.) For the first offence he shall be liable to a penalty not exceeding fifty pounds, *or* to imprisonment with or without hard labour for a term not exceeding one month;

First offence.
Ib.

35 & 36 Vict.
c. 94.

Sect. 3.
Second of-
fence.
Ib.

Third and
subsequent
offence.
Ib.*

On second
conviction to
forfeit licence,
&c.
Ib.

Penalty not
incurred in
case of death
or bank-
ruptcy of
licensed
person.
Ib.

(2.) For the second offence he shall be liable to a penalty not exceeding one hundred pounds, *or* to imprisonment with or without hard labour for a term not exceeding three months, —and he may, by order of the court by which he is tried, be disqualified for any term not exceeding five years from holding any licence for the sale of intoxicating liquors :

(3.) For the third and any subsequent offence he shall be liable to a penalty not exceeding one hundred pounds, *or* to imprisonment with or without hard labour for any term not exceeding six months, —and may by order of the court by which he is tried be disqualified for any term of years *or* for ever from holding any licence for the sale of intoxicating liquors :

In addition to any other penalty imposed by this section any person convicted of a second or any subsequent offence under this section *shall*, if he be the holder of a licence, forfeit such licence, —and in the case of a conviction for *any* offence under this section, the court may, if it thinks expedient so to do, declare all intoxicating liquor found in the possession of any such person as last aforesaid, and the vessels containing such liquor, to be forfeited.

No penalty shall be incurred under this section by the heirs, executors, administrators, or assigns of any licensed person who dies before the expiration of his licence, —*or* by the trustee of any licensed person who is adjudged a bankrupt, *or* whose affairs are liquidated by arrangement before the expiration of his licence in respect of the sale or exposure for sale of any intoxicating liquor, so that such sale or exposure for sale be made on the premises specified in such licence, and take place prior to the special session then next en-

suing, or (if such special session be holden within fourteen days next after the death of the said person or the appointment of a trustee in the case of his bankruptcy, *or* the liquidation of his affairs by arrangement) take place prior to the special session holden next after such special session as last aforesaid."

35 & 36 Vict.
c. 94.

Sect. 3.

The former enactments were, as to alehouses, 9 Geo. 4, c. 61, s. 18, specifically repealed; and as to beerhouses, 1 Will. 4, c. 64, s. 7, and 4 & 5 Will. 4, c. 85, s. 17, which are repealed by implication, except as to prosecutions by the excise, but the offenders cannot be prosecuted in both ways (see sect. 59, *ante*, p. 24). Sect. 4 in Chap. XI., *post*, p. 202, is also applicable to the unlicensed person.

(a) *Proof of Sale.*] As to evidence of the "sale" or "consumption" of intoxicating liquor, 35 & 36 Vict. c. 94, s. 62, provides,—“In proving the sale *or* consumption of intoxicating liquor for the purpose of any proceeding relative to any offence under this act, it shall not be necessary to show that any money actually passed *or* any intoxicating liquor was actually consumed, if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, *or* that any consumption of intoxicating liquor was about to take place;—and proof of consumption *or* intended consumption of intoxicating liquor on premises to which a licence under this act is attached, by some person other than the occupier of or a servant in such premises, shall be evidence that such liquor was sold to the person consuming, *or* being about to consume, *or* carrying away the same by or on behalf of the holder of such licence.”

Proof of
“sale” of in-
toxicating
liquor;
Ib. s. 62.

—liability of
licensed
person for act
of servant.
Ib.

See note (a) to sect. 13, p. 163, for observations and decisions on the liability of persons for the acts of their servants.

As regards the temporary continuance of licences forfeited for single offences, see 37 & 38 Vict. c. 49, s. 15, *post*, p. 192.

Sect. 5. “If any purchaser of any intoxicating liquor from a person who is *not* licensed to sell the same to be drunk on the premises drinks such liquor on the premises where the same is sold,—*or* on any highway adjoining *or* near such premises,—the seller of such liquor shall, if it shall appear that such drinking was with his privity or consent, be subject to the following penalties (that is to say):—

Allowing
buyer of
liquor to
drink it on a
highway, &c.
adjoining
premises not
licensed for
consumption.
Ib. s. 5.

Penalties.
Ib.

For the first offence he shall be liable to a penalty not exceeding ten pounds :

35 & 36 Vict.
c. 94.

Sect. 5.

For the second and any subsequent offence he shall be liable to a penalty not exceeding twenty pounds.

For the purposes of this section the expression 'premises where the same is sold' shall include any premises adjoining *or* near the premises where the liquor is sold, if belonging to the seller of the liquor *or* under his control, or used by his permission."

The previous enactments were 4 & 5 Will. 4, c. 85, s. 4, amended by 32 & 33 Vict. c. 27, s. 14;—and were further amended by 33 & 34 Vict. c. 29, s. 6 (all of which are repealed), to meet the cases of *Cross v. Watts* (32 L. J. (N. S.) M. C. 73; 7 Law T., N. S. 463), and *Deal v. Schofield* (37 L. J. (N. S.) M. C. 15; 17 Law T., N. S. 143).

See also sect. 6, *infra*, which refers to the same class of houses,—those not licensed for the sale of liquor *not* to be consumed on the premises.

With regard to recording convictions on licences, see 37 & 38 Vict. c. 49, s. 13, *post*, p. 193.

Taking liquor
from pre-
mises not
licensed to
other pre-
mises,
deemed a
selling on
such un-
licensed pre-
mises.
Ib. s. 6.

Sect. 6. "If any person having a licence to sell intoxicating liquors *not* to be drunk on the premises, himself takes *or* carries,—*or* employs *or* suffers any other person to take or carry,—any intoxicating liquor out *or* from the premises of such licensed person for the purpose of being sold on his account, *or* for his benefit or profit, and of being drunk or consumed in any other house, *or* in any tent, shed or other building of any kind whatever, belonging to such licensed person, *or* hired, used or occupied by him, *or* on or in any place, whether enclosed or not, and whether or not a public thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such licensed person, with his privity and consent,—and such licensed person shall be punished accordingly in manner provided by this act [i. e. *sect. 3 or 5 as the case may be*].

Penalty.
Ib.

Evidence of
evasion.

In any proceeding under this section it shall not be

necessary to prove that the premises or place or places to which such liquor is taken to be drunk belonged to, or were hired, used or occupied by the seller, if proof be given to the satisfaction of the court hearing the case that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his licence.”

35 & 36 Vict.
c. 94.
Sect. 6.

This section refers to the same class of houses as in the sect. 5, *supra*, and appears to be an extension of sect. 3 or sect. 5 to the “taking” of the liquor to the prohibited premises, tent or highway, &c., for the purpose of being drunk there in evasion of the law.

The 4 & 5 Will. 4, c. 85, s. 4, and 23 Vict. c. 27, s. 5 (both repealed), formerly applied to this enactment, and 32 & 33 Vict. c. 27, s. 14 (repealed), applied to the last paragraph of the section.

As to recording convictions, see *post*, p. 193.

Sect. 7. “Every holder of a licence who sells or allows any person to sell, to be consumed on the premises, any description of spirits to any person apparently under the age of sixteen years, shall be liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and any subsequent offence.”

Sale of spirits
to children
under sixteen
years of age.
Ib. s. 7.

The only acts before relating to an offence like this were those in force in the metropolis, viz., 2 & 3 Vict. c. 47, s. 43 (repealed), in the metropolitan police district, and 2 & 3 Vict. c. xciv. s. 27, in the city of London; both of which acts applied, and now only the latter, to all “exciseable liquors,” and not spirits merely. See sect. 62, *ante*, p. 157, and cases in note (a), p. 163.

If the child is really, upon proof, above sixteen, the offender should not be convicted.

Sect. 8. “Every person shall sell all intoxicating liquor which is sold by retail and not in cask or bottle, and is not sold in a quantity less than half a pint, in measures marked according to the imperial standards (a).”

Sale to be by
standard
measure.
Ib. s. 8.

Every person who acts—or suffers any person under his control or in his employment to act (b)—in contravention of this section shall be liable to a penalty not

Penalty.

35 & 36 Vict.
c. 94.

Sect. 8.

exceeding for the first offence ten pounds, and not exceeding for any subsequent offence twenty pounds,—and shall also be *liable to forfeit* the illegal measure in which the liquor was sold.”

The previous acts upon this offence were 9 Geo. 4, c. 61, s. 19; 1 Will. 4, c. 64, s. 16, and 23 Vict. c. 27, s. 26, all repealed.

(a) The acts as to the imperial standards are 18 & 19 Vict. c. 72, and 29 & 30 Vict. c. 82. The act as to the permissive metric system is 27 & 28 Vict. c. 117; and the general Weights and Measures Acts, which contain other penalties, are 5 & 6 Will. 4, c. 63, and 22 & 23 Vict. c. 56 (see Oke's "Synopsis," 11th ed., vol. i., pp. 742—746).

(b) The servant who so acts *under his master's orders*, would be liable as an aider and abettor under the 11 & 12 Vict. c. 43, s. 5, *ante*, p. 154.

Making internal communication between licensed premises and house of public resort.
Ib. s. 9.

Sect. 9. "Every person who makes *or* uses,—*or* allows to be made or used,—any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment *or* resort, *or* as a refreshment house, shall be liable to a penalty not exceeding ten pounds for every day during which such communication remains open.

Forfeiture of licence.
Ib.

In addition to any penalty imposed by this section any person convicted of an offence under this section *shall*, if he be the holder of a licence, forfeit such licence."

This section is similar to that in force in the metropolitan police district, 2 & 3 Vict. c. 47, s. 45 (unrepealed), which applies to other exciseable articles than wine, spirits and beer, and to houses, &c. "in which wine is sold by a free vintner." The City Act, 2 & 3 Vict. c. xciv. s. 29, is to the same effect; but under these two acts, although the money penalty is the same, the licence of a licensed person is not forfeited.

Further, with regard to 35 & 36 Vict. c. 94, s. 9, see 37 & 38 Vict. c. 49, s. 15, *post*, p. 192.

Penalty on illicit storing of liquor.
Ib. s. 10.

Sect. 10. "If any licensed person has in his possession on the premises in respect of which his licence is granted, any description of intoxicating liquor which he is not authorized to sell, unless he shall account for the possession of the same to the satisfaction of the

court by which he is tried,—he shall forfeit such liquor and the vessels containing the same, and shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for any subsequent offence twenty pounds.”

The penalty under 3 & 4 Vict. c. 61, s. 10 (repealed), was 50*l.* and forfeiture of licence. The 4 & 5 Will. 4, c. 85, s. 16, which imposed a cumulative penalty of 20*l.* over and above any excise penalties, is impliedly repealed by the section in the text.

See 37 & 38 Vict. c. 49, s. 16, *post*, p. 178, as to the power of constables to enter houses under a justices’ warrant, and as to the excise officer’s authority.

Sect. 11. “Every licensed person shall cause to be painted or fixed,—and shall keep painted or fixed,—on the premises in respect of which his licence is granted, in a conspicuous place and in such form and manner as the [*commissioners of inland revenue, see infra*] may from time to time direct, his name, with the addition after the name of the word ‘licensed,’ and of words sufficient, in the opinion of the said commissioners, to express the business for which his licence has been granted, and in particular of words expressing whether the licence authorizes the sale of intoxicating liquor to be consumed on or off the premises only, as the case may be;—and no person shall have any words or letters on his premises importing that he is authorized as a licensed person to sell any intoxicating liquor which he is not in fact duly authorized to sell. Every person who acts in contravention of the provisions of this section shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.”

Whereas by section 11 of the principal act it is provided that every licensed person shall cause to be painted or fixed, and shall keep painted or fixed, on the premises in respect of which his licence is granted, in a conspicuous place and in such form and manner as

35 & 36 Vict.
c. 94.

Sect. 10.

Names of
licensed
persons, &c.
to be affixed
to premises.
Ib. s. 11.

Painting
words when
not autho-
rized.
Ib.

Penalty.
Ib.

Substitution
of licensing
justices for
commis-
sioners of
inland
revenue as
respects
certain
notices.

37 & 38 Vict.
c. 49, s. 28.

the commissioners of inland revenue may from time to time direct, his name, with such additions as in the said act mentioned: And whereas it is expedient to substitute in the said section the licensing justices for the commissioners of inland revenue: Be it therefore enacted,—That in the said eleventh section the expression “licensing justices” shall be deemed to be substituted for the expression “commissioners of inland revenue,” and the word “justices” for the word “commissioners.”

The commissioners have, in accordance with section 11 of 35 & 36 Vict. c. 94, by a general order dated 31st August, 1872, directed that this “inscription shall be in Roman capital, or other equally distinct form of letters, not less than one inch in height, and placed upon a back ground of such difference of colour as shall make it clearly legible to persons passing along the thoroughfare in which the premises are situated. If a trader takes out a six-days’ licence he must also add the words, ‘Not to sell on a Sunday.’” And also, “that, as required by the act 6 Geo. 4, c. 81, s. 25, every such signboard shall be placed on the outside of the front of the entered premises, over the principal entrance, and not more than three feet from the top of such entrance or door, and shall be preserved and kept in good order.” But in the case of *provisional licences*, the notice may be put up in any conspicuous place, on the premises (37 & 38 Vict. c. 49, s. 22, *ante*, p. 98).

The previous acts on the subject of this section were 1 Will. 4, c. 64, s. 6, and 4 & 5 Will. 4, c. 85, s. 18, both repealed.

With regard to early closing licences, see 37 & 38 Vict. c. 49, s. 7, *ante*, p. 89.

Where justices refused to hear summons against a person for having a board over his door, stating that he was licensed to retail beer, &c., he not being so licensed, contrary to 35 & 36 Vict. c. 74, s. 11, the court refused a rule against the justices under 11 & 12 Vict. c. 44, s. 5, but granted rule for mandamus. It is only where justices would need protection if they proceeded to do any act relating to the duties of their office, that a rule, calling on them to show cause why such act should not be done, can be granted (*Reg. v. Percy*, L. R., 9 Q. B. 64; 43 L. J., M. C. 45).

Penalty for
permitting
drunkenness.
35 & 36 Vict.
c. 94, s. 13.

Sect. 13. “If any licensed person permits drunkenness (a) or any violent, quarrelsome or riotous conduct to take place on his premises,—or sells any intoxicating liquor to any drunken person,—he shall be liable to a

penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

35 & 36 Vict.
c. 94.
Sect. 13.

As to recording convictions, see *post*, p. 193.

The offences in this section were formerly offences described in the licences for alehouses and beerhouses, and in the Refreshment Houses Act, 28 Vict. c. 27, s. 29.

(a) This must mean knowingly permits, as knowledge will still have to be proved by evidence directly or indirectly, although that word had been struck out when the bill was before the House of Commons. As to the liability of the licensed person for the acts of his servants, in *Harrison v. Leaper* (5 Law T., N. S. 640), Cockburn, C. J., said that a man was not liable for his servant's criminal acts, the servant being bound to know the law as well as his master, and that there must be shown a *mens rea* in the master. See also *Reg v. Handley* (9 Law T., N. S. 827), decided under the Mines Inspection Act, 5 & 6 Vict. c. 99, ss. 8, 13. In *Wilson v. Stewart* (32 L. J. (N. S.) M. C. 198; 8 Law T., N. S. 277), it was decided that if the keeper of a place of public resort leaves his premises in the management of a servant, and prostitutes are suffered to meet together and remain in the house, the mere relation of master and servant neither makes nor prevents the latter from being an aider and abettor in the offence; and if the servant in knowingly suffering the prostitutes to meet together and remain is carrying out the master's orders, the master is guilty as principal, and the servant as aiding and abetting (see also *Du Caux v. Powley*, 28 J. P. 806);—the latter under the 11 & 12 Vict. c. 43, s. 5, *ante*, p. 154. In *Searle v. Reynolds* (14 L. T., N. S. 518), the Court of Queen's Bench held, that a master was liable for the disobedience of an order (of an inspector to disinfect premises under one of the Cattle Plague Acts) by his foreman, it being found that the master had knowledge of the order. In that case Mellor, J., after quoting the language of Bayley, B., in *Att.-Gen. v. Siddon* (1 Cr. & J. 220), said, "I cannot agree as to the necessity for the *mens rea*, as this is simply a penalty for breach of a sanitary regulation." In *Core v. James* (41 L. J. (N. S.) M. C. 19; 25 Law T., N. S. 593), it was held that a person cannot be convicted under sect. 8 of 6 & 7 Will. 4, c. 37, for using prohibited mixtures or ingredients in the making of bread for sale, unless there be knowledge, either in himself or in the person employed by him, of the presence of the mixture or ingredient (Oke's "Synopsis," 11th ed., vol. i., pp. 126, 127). It is important, however, to notice that the licensed person is made liable for the acts of his servants by 37 & 38 Vict. c. 49, s. 16, *post*, p. 178, as to entry by constables, where he is specially made liable to a penalty if he "by any person in his employ" refuses admission; and by 35 & 36 Vict. c. 94, s. 62 (set out in note to sect. 3, *ante*, p. 157), which applies to evidence

In what cases
the master
liable for acts
of his ser-
vants.

35 & 36 Vict.
c. 94. of sale of intoxicating liquor, when a *licensed* person is charged with an offence involving a sale, &c.

With regard to the record of convictions, see 37 & 38 Vict. c. 49, s. 18, *post*, p. 193.

Power to
exclude
drunkards
from licensed
premises.

Sect. 18.

It should be observed that the licensed person or his servants may turn out of his house a drunken person. That power is given him by sect. 18 of the 35 & 36 Vict. c. 94, which enacts,—“Any licensed person may refuse to admit to and may turn out of the premises in respect of which his licence is granted any person who is drunken, violent, quarrelsome, *or* disorderly,—and any person whose presence on his premises would subject him to a penalty under this act (*a*).

Penalty on
drunkards
refusing to
leave the
licensed pre-
mises.

Any such person who upon being requested in pursuance of this section by such licensed person, *or* his agent *or* servant, *or* any constable, to quit such premises, refuses *or* fails so to do, shall be liable to a penalty not exceeding five pounds,—and all constables are required on the demand of such licensed person, agent, *or* servant, to expel *or* assist in expelling every such person from such premises, and may use such force as may be required for that purpose (*b*).

Hard labour.

The court committing any person to prison for non-payment of any penalty under this section may order him to be imprisoned with hard labour.”

Offences on
premises
with occa-
sional licence.

37 & 38 Vict.
c. 49, s. 20.

For the purpose of so much of the principal act as relates to offences against public order, that is to say, sections twelve to eighteen (*c*), both inclusive, and the sections for giving effect to the same, a person taking out an occasional licence shall be deemed to be a licensed person within the meaning of the said sections, and the place in which any intoxicating liquors are sold in pursuance of the occasional licence shall be deemed to be licensed premises, and to be the premises of the person taking out such licence.

(a) This section has reference to sections 14, 15, 16 and 17 of this act as well as to this section. 35 & 36 Vict.
c. 94.

(b) It was the law partially before, by 23 Vict. c. 27, s. 41 (repealed), but then a constable was to prosecute for the penalty (s. 30, also repealed).

(c) Sect. 12, see *post*, p. 202; sect. 13, see *ante*, p. 162; sect. 14, see *infra*, p. 165; sect. 15, see *infra*, p. 165; sect. 16, see *post*, p. 166; sect. 17, see *post*, p. 167; sect. 18, see *supra*, p. 164.

Sect. 14. "If any licensed person knowingly permits his premises to be the habitual resort of *or* place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, he shall, if he allow them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds."

Permitting premises to be the resort of prostitutes.
Sect. 14.

The same cases and observations as under sect. 13, *ante*, p. 163, apply to the offence here enacted; but here we have the word "knowingly" before "permits."

With reference to the time for taking refreshments, it had been decided before this act, under other acts which did not allow any exception, that it was an offence for prostitutes to remain longer than necessary for that purpose. See the cases of *Greig v. Bendon*, 27 L. J. (N. S.) M. C. 294; 31 Law T., N. S. 97; *Purkis v. Huxtable*, 28 L. J. (N. S.) M. C. 221; *Parker v. Green*, 6 Law T., N. S. 46; *Belasco v. Hannant and Barton*, 31 L. J. (N. S.) M. C. 225; 6 Law T., N. S. 577; Oke's "Synopsis," 11th ed., vol. i., pp. 236, 237. The exception must now be proved by the defendant (sect. 51 in Chap. XII.).

See sect. 18, *ante*, p. 164, as to turning prostitutes out of the house; and sect. 15, *infra*, when indecencies are allowed by the licensed person.

The Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 10, imposes penalties also for harbouring thieves or reputed thieves. See the next division of this Chapter, *post*, p. 183.

As to recording convictions on licences, see 37 & 38 Vict. c. 49, s. 13, *post*, p. 193; see also *ib.* s. 20, *ante*, p. 164.

Sect. 15. "If any licensed person is *convicted* of permitting his premises to be a brothel, he shall be liable to a penalty not exceeding twenty pounds, and shall *forfeit* his licence, and he shall be *disqualified* for ever

Penalty for permitting premises to be a brothel.
Ib. s. 15.

35 & 36 Vict.
c. 94.

Sect. 15.

from holding any licence for the sale of intoxicating liquors."

Different constructions have been put on this section in consequence of the words "*convicted of permitting*" being used, instead of the ordinary language "*permits*," and it is said that no summary conviction can take place under it as the word "*convicted*" refers to a conviction already made at the assizes or quarter sessions, under 25 Geo. 2, c. 36, for "*keeping a bawdy house, or other disorderly house*." Independently of the words constituting the offence being different, the better opinion is (in which the writer concurs) that the section is intended to provide a more summary and expeditious remedy against licensed persons permitting their premises *on one occasion only* to be used as a brothel, than now exists under the cumbrous proceeding by indictment at the instance of the parish officers, set in motion by two inhabitants, provided by 25 Geo. 2, c. 36, s. 5, and 58 Geo. 3, c. 70, s. 7, where the fine is unlimited, and the imprisonment may be two years (see Oke's "*Synopsis*," 11th ed., vol. ii., pp. 996, 997), and, therefore, that the offence is punished summarily on conviction upon similar evidence of the conduct of the man and woman to that required on an indictment (see Arch. Cr. Pl. by Bruce, 16th ed. p. 830), and the "*penalty and forfeiture may be recovered and enforced*" as provided by sect. 51 of this act (Chap. XII.); but, of course, the offender cannot be punished in both modes (sect. 59, *ante*, p. 24).

As to offences on premises with occasional licences, see 37 & 38 Vict. c. 49, s. 20, *ante*, p. 164.

Harbouring
constables
while on
duty, &c.
1b. s. 16.

Sect. 16. "If any licensed person—

- (1.) Knowingly harbours *or* knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping *or* restoring order or in execution of his duty (*a*);—or
- (2.) Supplies any liquor *or* refreshment, whether by way of gift *or* sale, to any constable on duty unless by authority of some superior officer of such constable (*b*);—or

Penalty.

- (3.) Bribes *or* attempts to bribe any constable (*b*), he shall be liable to a penalty not exceeding for the

first offence ten pounds, and not exceeding for the second or any subsequent offence twenty pounds.

35 & 36 Vict.
c. 94.

Sect. 16.

(a) These offences were formerly punished under 23 Vict. c. 27, s. 39 (repealed), in respect to refreshment-houses selling wine by retail, and the County Police Act, 2 & 3 Vict. c. 93, s. 16 (unrepealed), which applies to all houses, &c. "for the sale of any liquors, whether spirituous or otherwise." The Police of Towns Act, 10 & 11 Vict. c. 89, s. 34, is also a similar clause, also still in force.

(b) The offences in subs. 2 and 3 are new.

As to the record of conviction, see 37 & 38 Vict. c. 49, s. 13, *post*, p. 193, and offences on premises with occasional licences, see *ib.* sect. 20, *ante*, p. 164.

Where the servant of a licensed victualler knowingly supplied liquor to a constable on duty, without the authority of his superior officer, it was held that the licensed victualler was liable to be convicted under 35 & 36 Vict. c. 94, s. 16, subs. 2, although he had not knowledge of the act of his servant. (*Mullins v. Collins*, 43 L. J., (N. S.) M. C. 67; L. R., 9 Q. B. 292; 29 L. T., N. S. 838).

Sect. 17. "If any licensed person—

(1.) Suffers any gaming *or* any unlawful game to be carried on on his premises (a);—or

Permitting
gaming, un-
lawful games
or betting.

Ib. s. 17.

(2.) Opens, keeps, *or* uses, *or* suffers his house to be opened, kept, *or* used—in contravention of the act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter one hundred and nineteen, intituled 'An Act for the Suppression of Betting Houses' (b),

he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

Penalty.

Ib.

(a) The offences in the first subsection were formerly offences against the tenor of the licences of alehouse, beerhouse keepers and refreshment-house keepers, in which licences they were described.

As to what is Gaming, &c.] Alehouse keepers, coming within the term "victuallers," may, since the 8 & 9 Vict. c. 109, s. 11, keep a "billiard table or bagatelle board, or instrument used in any game of the like kind," without being licensed, or

*As to what is
gaming or
unlawful
games.*

25 & 26 Vict.
c. 94.

liable to the penalty for suffering them to be used, for they are no longer unlawful games; but beerhouse keepers are not so exempted (see Chap. XVI. "As to Billiard Licences"); but if either of these games, or any other games, as bowls, tennis and the like, or cards, dice or tenpins, &c., be played for money or beer or money's worth, or there be betting at the games, with the knowledge of the alehouse keeper, that constitutes "gaming" (see per Cresswell, J., in *Foot v. Baker*, 6 Scott, N. R. 301, cited at 11 J. P. 444); and if the publican is aware of that fact, it will then come within the provision which prohibits "any gaming whatsoever." See *Dunford v. Taylor*, 20 Law T., N. S. 483. If either of these games is played for pastime or amusement only, it is perfectly legal. In the case of *Searle v. Justices of St. Martin's* (14 J. P. 276, Middlesex Sessions), it was decided that allowing betting lists of horse races to be exhibited in the alehouse was a gaming within the act 9 Geo. 4, c. 61. Playing at cards or dice is not an "unlawful game," not being prohibited by any statute (see *Allport v. Nutt*, 14 L. J. (N. S.) C. P. 272; 1 C. B. 989); nor is the game of dominoes (*Reg. v. Ashton*, 22 L. J. (N. S.) M. C. 1). In *Patten v. Rhymer* (29 L. J. (N. S.) M. C. 189; 2 Law T., N. S. 352), it was held that it is an offence against the tenor of the alehouse keeper's licence for him to permit his private friends to game for money in his house. In *Awards v. Dance* (26 J. P. 437), it was held, that the offence of gaming does not consist in a mere casual act of a customer; and (per Crompton, J.), it is not "to be taken for granted, that if the keeper of the house leave some one in charge of it, and gaming is carried on, he can escape by saying that he himself knew nothing about it."

16 & 17 Vict.
c. 119, s. 1.

(b) By the Betting Houses Act, 1853, 16 & 17 Vict. c. 119, s. 1, "no house, office, room or other place shall be opened, kept or used for the purpose of the owner, occupier or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof, betting with persons resorting thereto;—or for the purpose of any money or valuable things being received by or on the behalf of such owner, occupier, keeper or person as aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, expressed or implied, to pay or give thereafter any money or valuable thing on any event or contingency, of or relating to any horse race, or other race, fight, game, sport or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid;—and every house, office, room or other place opened, kept or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law." By sect. 2, "every house, room, office or place opened, kept or used for the purposes aforesaid, or any of them, shall be taken and deemed to be a common gaming house within

Ib. s. 2.

the meaning of the 8 & 9 Vict. c. 109, 'To amend the Law concerning Games and Wagers.'" Sect. 3 imposes a penalty of 100*l.* or six months' imprisonment on the owner or occupier, or other person, if he should "open, keep *or* use" or "knowingly and wilfully permit" the house, &c. "to be opened, kept *or* used" for the purposes aforesaid. Of course, the licensed person cannot be punished under both acts (see sect. 59, *ante*, p. 24).

35 & 36 Vict.
c. 94, s. 3.

The Betting Houses Act of 1853 was amended by the Betting Act, 1874 (37 Vict. c. 15), as follows :—

This act shall be construed as one with the act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter one hundred and nineteen, intituled "An Act for the suppression of betting houses" (in this act referred to as the principal act), and the principal act and this act may be cited together as the Betting Acts, 1853 and 1874, and each of them may be cited separately as the Betting Act of the year in which it was passed.

Act how to
be construed.
37 Vict. c. 15,
s. 1.

Short title.
Ib.

This act shall not come into operation until the thirty-first day of July, one thousand eight hundred and seventy-four.

Commence-
ment of Act.
Ib. s. 2.

Where any letter, circular, telegram, placard, handbill, card, or advertisement is sent, exhibited, or published,—

Penalty on
persons
advertising
as to betting.
Ib. s. 3.

(1.) Whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal act, or will make on behalf of any other person any such bet or wager as is mentioned in the principal act ; or,

(2.) With intent to induce any person to apply to any house, office, room, or place, or to any person, with the view of obtaining information or advice for the purpose of any such bet or wager or with respect to any such event or contingency as is mentioned in the principal act ; or,

(3.) Inviting any person to make or take any share in or in connection with any such bet or wager ;

every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the principal act with respect to offences under that section.

As to the record of convictions, see 37 & 38 Vict. c. 49, s. 13, *post*, p. 198; and offences on premises with occasional licences, see *ib.* s. 20, *ante*, p. 164.

Defacing record of conviction on licence.

35 & 36 Vict. c. 94, s. 34.

Sect. 34. "If any person defaces *or* obliterates, *or* attempts to deface *or* obliterate, any record of a conviction on his licence, he shall be liable to a penalty not exceeding five pounds."

Vide Chap. IX., *post*, p. 187, *et seqq.*, as to recording convictions on licences.

Adulteration of Liquor.

The 35 & 36 Vict. c. 94, contained in sects. 19, 20, 21 and 22, under this heading, a variety of enactments as to adulterating intoxicating liquors, the possession of such liquor or the deleterious ingredients, and the analysing of it; but all these have been repealed by 37 & 38 Vict. c. 49, s. 33.

The general acts upon the subject of the adulterations of food, drink, and drugs are the 23 & 24 Vict. c. 84, 31 & 32 Vict. c. 121, and 35 & 36 Vict. c. 74. These acts are set forth at length in Glen's Law of Public Health and Local Government, pp. 896—911, 7th edition. By the last-mentioned act it is enacted,—

Penalty on persons adulterating articles of food or drink or drugs.

35 & 36 Vict. c. 74, s. 1.

Every person who shall wilfully admix, and every person who shall order any other person or persons to admix, with any article of food or drink, any injurious or poisonous ingredient* or material to adulterate the same for sale, and every person who shall wilfully admix, and every person who shall order any other person or persons to admix, any ingredient or material with any drug to adulterate the same for sale, shall for the first offence forfeit and pay a penalty not exceeding fifty pounds, together with the costs attending such conviction, and for the second offence shall be guilty

* This seems to point to a felonious offence and not merely to one punishable by fine or imprisonment under the summary jurisdiction of justices of the peace.

of a misdemeanour, and be imprisoned for a period not exceeding six calendar months, with hard labour.

35 & 36 Vict.
c. 74, s. 1.

Every person who shall sell any article of food or drink with which to the knowledge of such person any ingredient or material injurious to the health of persons eating or drinking such article has been mixed, and every person who shall sell as unadulterated any article of food or drink, or any drug which is adulterated, shall for every such offence, on a summary conviction of the same before two justices of the peace at petty sessions in England, or before two justices of the peace in the justices of the peace court, or before the sheriff substitute of the county, or before any magistrate acting under any general or local Police Act in Scotland, or before justices at petty sessions or a divisional justice in Ireland, forfeit and pay a penalty not exceeding twenty pounds, together with such costs attending such conviction as to the said justices, sheriff substitute, magistrate, or divisional justice shall seem reasonable; and if any person so convicted shall afterwards commit the like offence, such justices, sheriff substitute, magistrate, or divisional justice shall cause such offender's name, place of abode, and offence to be published, at the expense of such offender, in such newspaper or in such other manner as to the said justices shall seem desirable.

Penalty on persons selling articles of food or drink or drugs which they know to have been adulterated.

1b. s. 2.

Any person who shall sell any article of food or drink or any drug, knowing the same to have been mixed with any other substance with intent fraudulently to increase its weight or bulk, and who shall not declare such admixture to any purchaser thereof before delivering the same and no other, shall be deemed to have sold an adulterated article of food or drink or drug, as the case may be, under this act.

Vendor to declare mixture at time of sale.

1b. s. 3.

Whatever may be the effect of sect. 3 of this act, it was not

35 & 36 Vict.
c. 74, s. 3.

intended to cut down sect. 2; it merely adds an additional offence (*Fitzpatrick v. Kelly*, L. R., 8 Q. B. 337; 42 L. J., M. C. 132).

Pharmacy
Act, 1868, and
23 & 24 Vict.
c. 84, incor-
porated with
this Act.

proviso, 23 &
24 Vict. c. 26.

Ib. s. 4.

The Pharmacy Act, 1868, and the act twenty-third and twenty-fourth Victoria, chapter eighty-four, for preventing the adulteration of articles of food and drink, shall be deemed to be incorporated in this act: Provided always, that in the application of this act to Ireland the act passed in the session of parliament held in the thirty-third and thirty-fourth year of the reign of her present Majesty, chapter twenty-six, intituled "An Act to regulate the sale of poisons in Ireland," shall be deemed to be incorporated in this act instead of the Pharmacy Act, 1868.

Appointment
of analysts.

Ib. s. 5.

In the city of London and the liberties thereof the commissioners of sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the act for the better local management of the metropolis; in England the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local act of parliament or otherwise a separate police establishment; in Ireland the grand jury of every county, county of a city, and county of a town, and town council of every borough; and in Scotland the commissioners of supply at their ordinary meetings for counties, and the commissioners or boards of police, or, where there are no such commissioners or boards, the town councils for boroughs within their several jurisdictions, may, and when required so to do by the Local Government Board in England, or by one of her Majesty's principal Secretaries of State in Scotland, or by the Lord Lieutenant or other chief governor or governors in

Ireland, shall, for their respective city, districts, counties, or boroughs, appoint and remove one or more persons possessing competent medical, chemical, and microscopical knowledge as analysts of all articles of food, drink, and drugs purchased within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such salary or allowances as they may think fit; but such appointments and removals shall at all times be subject in England to the approval of the Local Government Board, in Scotland of one of her Majesty's principal Secretaries of State, and in Ireland of the Lord Lieutenant or other chief governor or governors.

25 & 26 Vict.
c. 74, s. 5.

The inspector of nuisances or the inspector of weights and measures, or the inspector of markets, may one or all of them, as the local authority appointing them shall think fit to determine, in every district, county, city, or borough, procure and submit samples of articles of food or drink and drugs suspected to be adulterated to be analysed by the analysts appointed under this act, and shall, upon receiving a certificate stating that the articles of food or drink or drugs are adulterated, cause a complaint of an offence against this act by the party selling or adulterating such articles of food or drink or drugs to be made before a justice of the peace, and thereupon such justice shall issue a summons requiring the seller or the adulterator to appear before two justices of the peace at petty sessions in England, or before two justices of the peace in the justice of the peace court, or before the sheriff substitute of the county, or before any magistrate acting under any general or local police act in Scotland, or before justices of petty sessions or divisional justices in Ireland, to answer such complaint, and such summons shall be served by delivering the

Inspectors of
nuisances, &c.
may submit
articles to be
analysed.
Ib. s. 6.

35 & 36 Vict.
c. 74, s. 6.

same, or a true copy thereof, upon the premises where such samples were obtained or sold, and the expense of such prosecutions, if not ordered to be paid by the party complained against, shall be deemed part of the expense of executing this act.

Analysts to
make reports
quarterly to
local authori-
ties.

Ib. s. 7.

The analysts appointed under this act shall report quarterly to the local authorities appointing them the number of articles of food, drink, or drugs analysed by them under this act during the foregoing quarter, and shall specify the nature and kind of adulterations detected in such articles of food, drink, and drugs, and all such reports shall be read at the meetings of the local authorities appointing such analysts.

Proof of iden-
tity of articles
submitted to
analysts.

Ib. s. 8.

On the hearing by the justices, sheriff substitute, magistrate, or divisional justice of any complaint under his act in any district, county, city, or borough, wherein analysts shall have been appointed under this act, the purchaser, or inspector of nuisances, or the inspector of weights and measures, or the inspector of markets, as the case may be, shall prove to the satisfaction of such justices, sheriff substitute, magistrate, or divisional justice that the article of food or drink or drugs alleged to be adulterated was delivered to the analysts in the same condition as regards its purity or impurity as it was when received from the seller.

Purchaser of
articles of
food, &c. may
require same
to be
analysed.

Ib. s. 9.

Any purchaser of any article of food or drink or drugs in any district, county, city, or borough where there is any analyst appointed under this act shall be entitled, on payment to the inspector or inspectors appointed under this act of a sum not less than two shillings and sixpence nor more than ten shillings and sixpence, which shall be accounted for to the local authority appointing such inspector or inspectors, to have any such article analysed by any analyst who may be appointed for such district, county, city, or

borough, and to receive from such analyst a certificate of the result of his analysis, specifying whether, in his opinion, such article is adulterated, and also whether, if it be an article of food or drink, it is so adulterated as to be injurious to the health of persons eating or drinking the same, and such certificate, duly signed by such analyst, shall, in the absence of any evidence before the court to the contrary, be sufficient evidence of the matters therein certified, and the sum so directed to be paid for such certificate shall be deemed part of the costs.

35 & 36 Vict.
c. 74. s. 9.

All articles of food, drink, or drugs to be analysed by the analysts appointed under this act shall be received by the inspectors appointed by the local authorities, and from all such articles of food, drink, or drugs, samples shall be taken and sealed in the presence of the analysts by the inspectors, to be retained by them and produced in case the justices, sheriff substitute, magistrate, or divisional justice shall order other analyses to be made.

Articles of food, &c. ordered for analysis to be received and samples retained by inspectors.
Ib. s. 10.

The expense of executing this act shall be borne, in the city of London and the liberties thereof, out of the consolidated rates raised by the commissioners of sewers of the city of London and the liberties thereof, and in the rest of the metropolis out of any rates or funds applicable to the purposes of the act for the better local management of the metropolis, and in counties out of the county rate, or out of the grand jury cess in Ireland, and in boroughs out of the borough fund, and in Scotland out of the police money in counties and boroughs respectively.

As to expenses of executing act.
Ib. s. 11.

Nothing in this act contained shall be held to affect the power of proceeding by indictment, or to take away any other remedy against any offender under this act.

Proceedings by indictment, &c. not to be affected.
Ib. s. 12.

Record of
conviction
for adultera-
tion.
37 & 38 Vict.
c. 49, s. 14.

Where a licensed person is convicted of any offence against the provisions of any act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licences, and may be directed to be recorded on the licence of the offender in the same manner as if the conviction were for an offence against this act, and when so recorded shall have effect as if it had been a conviction for an offence against this act.

With regard to recording convictions, see 37 & 38 Vict. c. 49, s. 13, *post*, p. 192.

Offences in respect to Closing of Licensed Premises.

Offences in
respect to
closing of
licensed pre-
mises,

The offences under the sections of the 35 & 36 Vict. c. 94, relating to the closing of licensed premises, are all set out in Chap. VIII., viz. :—

35 & 36 Vict.
c. 94, s. 23.

Sect. 23, *ante*, p. 150, "Any person who keeps open his premises *for the sale of* intoxicating liquors during any time at which the justices have ordered them to be closed :"

37 & 38 Vict.
c. 49, s. 9.

By 37 & 38 Vict. c. 49, s. 9, *ante*, p. 138, "Any person who, during the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors, although purchased before the hours of closing, to be consumed in such premises, shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence, to a penalty not exceeding twenty pounds."

35 & 36 Vict.
c. 94, s. 26.

Sect. 26, *ante*, p. 144, applies the provisions of sect. 24 (now 9 of 37 & 38 Vict. c. 49, *supra*), to houses having an exemption order from the local

authorities if they sell, &c. at unauthorized hours : It enacts, also, that the holder of such order shall be liable to a penalty of 5*l.* for not affixing a notice of such order outside his premises, and then "Every person who keeps affixed to his premises any such notice [of the order] when he does not hold an order under this section :"

35 & 36 Vict.
c. 94, s. 26.

Sect. 27, *ante*, p. 148, consuming intoxicating liquor in refreshment-houses, which are not licensed for the sale of any intoxicating liquor, during the hours when inns should be closed :

Ib. s. 27.

Sect. 28, *ante*, p. 149, "If any person keeping any such refreshment-house [*i. e.*, licensed "for the sale therein by retail of foreign wine"] sells *or* exposes for sale in such refreshment-house, —*or* opens *or* keeps open any such refreshment-house *for the sale of*—intoxicating liquors" after ten at night, *or* (where other licensed premises in the same place are required by *or* in pursuance of this act to close at nine) at nine at night,—"*or* during such time as aforesaid allows any intoxicating liquor to be consumed on such premises :"

Ib. s. 28.

Sect. 29, *ante*, p. 147, applies, like sect. 26, the provisions of 37 & 38 Vict. c. 49, s. 9, to houses having the occasional licence here mentioned.

Ib. s. 29.

In reference to all these offences, sect. 62, *ante*, p. 157, provides as to the evidence of a sale or consumption of intoxicating liquors, and the liability of the licensed person for the acts of his servants ; and it should be observed, generally, that where the offence in any section of the act is the selling *or* opening or

Evidence of
sale, &c. of
liquor.

keeping open of premises "*for the sale of intoxicating liquors*," the enactments will not prohibit pure gifts of liquors, nor the opening of houses for the sale of *non-intoxicating* liquors or refreshments, whether to travellers, lodgers, or other persons.

Constable
to enter on
premises for
enforcement
of act.

37 & 38 Vict.
c. 49, s. 16.

Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal act or this act which it is his duty to enforce, at all times enter on any licensed premises (a), or any premises in respect of which an occasional licence is in force.

Every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds.

Search
warrant for
detection of
liquors sold
or kept con-
trary to law.
Ib. s. 17.

Any justice of the peace, if satisfied by information (b) on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorized to be sold by retail, may in his discretion grant a warrant under his hand (b), by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant, and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place,

and the vessels containing such liquor; and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale by retail any liquor which he is not authorized to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited (c). 37 & 38 Vict.
c. 49, s. 17.

When a constable has entered any premises in pursuance of any such warrant as is mentioned in this section, and has seized and removed such liquor as aforesaid, any person found at the time on the premises shall, until the contrary is proved, be deemed to have been on such premises for the purpose of illegally dealing in intoxicating liquor, and be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises on which he seizes or from which he removes any such liquor as aforesaid, and if he has reasonable ground to suppose that the name or address given is false may examine such person further as to the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or to answer satisfactorily the questions put to him by the constable, apprehend him without warrant and carry him as soon as practicable before a justice of the peace.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

The power to enter houses previously given to constables was under 4 & 5 Will. 4, c. 85, s. 7; 23 Vict. c. 27, s. 18; 33 & 34 Vict. c. 29, s. 15; and 35 & 36 Vict. c. 94, s. 35 (all repealed). The officers of inland revenue have also the same authority under 3 & 4 Vict. c. 61, ss. 11, 12; 23 Vict. c. 27, s. 24.

37 & 38 Vict.
c. 49.

(a) This will include a cellar or an outhouse belonging to the premises (*Reg. v. Tott*, 30 L. J. (N. S.) M. C. 177 ; 4 L. T., N. S. 306).

(b) *Vide* forms of information and search warrant, No. 33, *infra*, and 34, *post*, p. 181.

(c) The expenses of the search and seizure are payable out of the proceeds of the sale of such forfeitures, 35 & 36 Vict. c. 94, s. 51, subsect. 5, *post*, p. 212.

When liquors kept for unlawful sale have been seized under sect. 15 of 33 & 34 Vict. c. 29, the justices cannot order them to be sold without giving the person, upon whose premises they were seized, an opportunity of being heard, and of showing that the seizure was improper, or that the sale ought not to take place (*Gill v. Bright*, 41 L. J., M. C. 22 ; 25 L. T., N. S. 591).

Not pro-
ducing licence
to justice,
constable or
officer of in-
land revenue.
35 & 36 Vict.
c. 94, s. 64.

Sect. 64. "Every holder of a licence, or of an order of exemption made by a local authority in pursuance of this act (a), shall, by himself, his agent, or servant, produce such licence or order within a reasonable time after the production thereof is demanded by a justice of the peace (b), constable, or officer of inland revenue, and deliver the same to be read and examined by him. Any person who acts in contravention of this section shall be liable to a penalty not exceeding ten pounds."

Penalty.
Ib.

(a) Under sects. 26 and 29, *ante*, pp. 144, 147, granted by the local authorities, exempting from the closing hours in the act.

(b) By sect. 55, *post*, p. 193 (Chap. X.), a justice can require the production of a licence by the summons issued for an offence. See a form given, p. 215 (Chap. XII.).

FORMS.

(33) Informa-
tion for
search war-
rant for
liquor (37 &
38 Vict. c. 49,
s. 17).

— } The information of C. D. of, &c., [or one of
to wit. } the constables of the parish of] in the [county]
of taken before me the undersigned, one of her Majesty's
justices of the peace in and for the said [county] at N. in the
same [county], this day of 187 who saith, that
he has reason to believe and verily does believe that certain
intoxicating liquor, to wit [beer, or wine, or spirits, or as the
case may be], is sold [or exposed, or kept for sale] by retail in

a certain house [*or shop, or room, or place*], situate number 37 & 38 Vict.
 in Street, in the parish of in the said [*county*] c. 49.
 of and within my jurisdiction by one A. B. a beerhouse-
 keeper, who is [not] licensed to sell the same, thereupon the
 reasons of such belief of the said C. D. are that [*here state the*
complainant's reasons].

_____ } To M. N. one of the constables of the parish of (34) Search
 to wit. } in the said county, and to all others whom it may warrant
 concern. } thereon.

Whereas information hath this day been made upon oath before me the undersigned, one of her Majesty's justices of the peace in and for the said [*county*] by C. D., of, &c., that [*he*, *here recite the last complaint*]: These are therefore in her Majesty's name pursuant to section 17 of the Licensing Act, 1874, to command and authorize you within one month from the date hereof with such assistance as may be necessary, to enter, and, if need be, by force, the said house [*or shop, or room, or*], and to search for intoxicating liquor therein, and to seize and remove all intoxicating liquor as shall be found therein, which you have reasonable ground to suppose is in such place for the purpose of unlawful sale therein or at any other place, as well as the vessels containing such liquor.

Given under my hand and seal, this day of in the
 year of our Lord , at in the county aforesaid.
 J. S. (L.S.)

2. *Offences punishable under other Acts.*

It should be observed—

- 1st. That, unless expressly stated, the convictions cannot be recorded on the licence, as for offences under the 35 & 36 Vict. c. 94 (see sect. 30, Chap. X., p. 188):
- 2nd. That persons cannot be punished under two acts or two ways for the same offence (sect. 59, *ante*, p. 24):
- 3rd. That the recovery and application of penalties imposed by the Wine and Beerhouse Acts as well as others, will be under the 11 & 12 Vict. c. 43, noticed in Chap. XII., if the particular act does not point out the mode.

Beer or cider
licence not to
authorize
sale of spirits
or sweets,
&c.
4 & 5 Will. 4,
c. 85, s. 16.

The Beerhouse Act, 4 & 5 Will. 4, c. 85, s. 16, enacts, "That no licence to be granted under the said recited act [1 Will. 4, c. 64] and this act for the sale of beer or cider shall authorize any person to take out or hold any licence for the sale of [wine] spirits, or sweets or made wines, or mead or metheglin; and if any person licensed under the said recited act and this act to sell beer or cider shall permit *or* suffer any [wine or] spirits, sweets or made wines, mead or metheglin, to be brought into his house or premises to be drunk *or* consumed there, *or* shall suffer any [wine] spirits, sweets, mead, or metheglin to be drunk *or* consumed in his house or premises by any person whomsoever, such person shall, over and above any excise penalty or penalties to which he may be subject, forfeit twenty pounds, to be recovered, levied, mitigated, and applied in the same manner as other penalties (not being excise penalties) are by this act to be recovered, levied, mitigated, and applied.

As far as concerns wine, this section may be taken as repealed, as 24 & 25 Vict. c. 91, s. 10, allows beer retailers to take out wine licences under the Refreshment Houses Act, 23 Vict. c. 27.

Taking
liquors in
pawn.

See a reference to the statute 24 Geo. 2, c. 40, s. 12, in Oke's "Synopsis," 11th ed., vol. i., Offence 29, p. 248.

Selling after
being con-
victed of
felony, &c.

Licensed persons selling liquor by retail after being convicted of felony or of selling spirits (without licence) are disqualified from holding a licence thereafter, and liable to penalty as if unlicensed. See the provisions in Chap. XV. as to excise penalties; of 3 & 4 Vict. c. 61, s. 7, and 33 & 34 Vict. c. 29, s. 14, and that relating to forging a justices' certificate for a licence of 32 & 33 Vict. c. 27, s. 11 in Chap. XI., as to offences by unlicensed persons.

The Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 10, provides against licensed persons and others harbouring thieves, &c. : it enacts,—“every person who occupies or keeps any lodging-house, *beerhouse, public-house, or other house or place where intoxicating liquors are sold*, or any place of public entertainment or public resort, and knowingly lodges or knowingly harbours thieves or reputed thieves,—or knowingly permits or knowingly suffers them to meet or assemble therein (*a*),—or knowingly allows the deposit of goods therein having reasonable cause for believing them to be stolen,—shall be guilty of an offence against this act, and be liable to a penalty not exceeding ten pounds, and in default of payment to be imprisoned for a period not exceeding four months, with or without hard labour (*b*),—and the court before which he is brought may, if it think fit, in addition to or in lieu of any penalty, require him to enter into recognizances, with or without sureties, . . . for keeping the peace or being of good behaviour during twelve months :—Provided that

- (1.) No person shall be imprisoned for not finding sureties . . . in pursuance of this section for a longer period than three months ; and
- (2.) The security required from a surety . . . shall not exceed twenty pounds :

And any licence for the sale of any intoxicating liquors, or for keeping any place of public entertainment or public resort, which has been granted to the occupier or keeper of any such house or place as aforesaid, may, in the discretion of the court, be *forfeited* on his first conviction of an offence under this section,—and on his second conviction for such an offence his licence shall be *forfeited*, and he shall be *disqualified* for a period of two years from receiving any such licence;—

34 & 35 Vict.
c. 112, s. 10.

Harbouring
thieves, &c.

Allowing
deposit of
stolen goods.
Ib.

Penalty, fine
and sureties.
Ib.

Forfeiture of
licence on
first conviction.
Ib.

Forfeiture
and disquali-
fication on

34 & 35 Vict.
c. 112, s. 10.

second con-
viction.

Ib.

If two con-
victions
within three
years, pre-
mises dis-
qualified for
one year.

Ib.

Licensed
person to pro-
duce his
licence.

Ib.

Penalty in
default.

Ib.

Appeal
against con-
viction.

Ib.

Recovery of
penalty.

Ib. s. 17.

moreover, where two convictions under this section have taken place within a period of three years in respect of the same premises, whether the persons convicted were or were not the same, the court shall direct that for a term not exceeding one year from the date of the last of such convictions no such licence as aforesaid shall be granted to any person whatever in respect of such premises (c);—and any licence granted in contravention of this section shall be void.

Any licensed person brought before a court, in pursuance of this section, shall produce his licence for examination, and if such licence is forfeited shall deliver it up altogether,—and if such person wilfully neglects or refuses to produce his licence he shall, in addition to any other penalty under this section, be liable on summary conviction to a penalty not exceeding five pounds (b);—provided that any person convicted under this section shall have a right to appeal against such conviction in the same manner in all respects as if the said conviction had been for an offence committed against the provisions of the act of the ninth George the Fourth, chapter sixty-one (d).

(a) A meeting, *i. e.*, what is known as a “friendly lead,”—held for the purpose of collecting money to assist an accused person or his family, is within this section (see *Marshall v. Fox*, 40 L. J. (N. S.) M. C. 142; 24 Law T., N. S. 751; decided on the Habitual Criminals Act, 1869, 32 & 33 Vict. c. 99, s. 10, of which the present section is a re-enactment).

(b) The mode of procedure for the recovery of and the application of penalty is under 11 & 12 Vict. c. 43, and is thus provided by this act of 34 & 35 Vict. c. 112 :—sect. 17 enacts (*inter alia*),—“Any offence against this act may be prosecuted before a court of summary jurisdiction, as follows: * * * in manner directed by the 11 & 12 Vict. c. 43, and any act amending the same. * * * ‘Court of summary jurisdiction’ shall in this act mean and include any justice or justices of the peace, * * * metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the acts in this section mentioned, or any acts therein referred to, or to proceedings before whom the provisions

of such acts are or may be made applicable. Provided as 34 & 35 Vict. c. 112, s. 17.
follows :—

1. The 'court of summary jurisdiction,' when hearing and determining an information, complaint, or other proceeding in respect of an offence against this act, shall be constituted in some one of the following manners; that is to say, * * * either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of one of the magistrates hereinafter mentioned, sitting alone or with others at some court or other place appointed for the administration of justice; that is to say, the lord mayor, a metropolitan police magistrate, a stipendiary magistrate, or some other officer or officers for the time being empowered by law to do alone or with others any act authorized to be done by more than one justice of the peace; * * *

2. The description of any offence against this act in the words of this act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this act, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and if so specified or negatived no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor or complainant.

4. [*This relates to convicts' licences.*]

5. Any person accused of an offence against this act may be remanded from time to time by the court before whom he is brought for the purpose of enabling evidence to be obtained against him, or for any other just cause.

6. No warrant or conviction in respect of any offence against this act shall be quashed for want of form, and the court before whom any question relating to the validity of any such warrant or conviction is brought may amend such warrant or conviction if it is of opinion that there was sufficient evidence before the court by whom the warrant was issued or conviction made to justify the issue of such warrant or making of such conviction."

The penalty recovered will be paid to the treasurer of the county, &c., under 11 & 12 Vict. c. 43, s. 31.

(c) The mode of proving a previous conviction is given in sect. 18 of the 34 & 35 Vict. c. 112, and being applicable to all convictions before justices, as well as those under 35 & 36 Vict. c. 94, when not required to be recorded [see note (a), p. 194, in Chap. X.], is more particularly referred to, *post*, p. 216, Chap. XII.

*Recovery of
penalty.*

(d) The mode of appealing will be under sect. 27 of the 9 Geo. 4, c. 61, given with its supplemental sections 28 and 29, *ante*, pp. 122—126 (Chap. VI.), which, although repealed by 35 & 36 Vict. c. 94, with respect to the appeal against the refusal to grant *new* licences, will still apply to convictions under the section in the text.

Allowing
seditious
meetings
in house.

Permitting seditious meetings in the licensed premises is also punishable summarily under the acts 39 Geo. 3, c. 79, and 57 Geo. 3, c. 19, on the prosecution of the attorney or solicitor-general (9 & 10 Vict. c. 33, s. 1). See Oke's "Synopsis," 11th ed., vol. i., pp. 644, 645.

CHAPTER X.

REPEATED CONVICTIONS AND RECORDING SAME, FORFEITURES AND DISQUALIFICATIONS, &c.

35 & 36 Vict.
c. 94.

It will be seen in the previous chapters of this work there are a variety of provisions in regard to the subjects of this chapter, which we will here recapitulate, viz. :—

Cases in which the convictions must be recorded or not.

1. *Cases in which the Convictions may (a) be recorded:*

Convictions recorded.

Ch. IX. Sect. 5. Allowing buyer of liquor to drink it on highway, *ante*, pp. 157, 158.

„ „ 6. Taking liquor from one premises to another, *ante*, pp. 158, 159.

„ „ 13. Permitting drunkenness, *ante*, pp. 162—164.

„ „ 14. Permitting premises to be the resort of prostitutes, *ante*, p. 165.

„ „ 16. Harboursing constables while on duty, &c., *ante*, p. 166.

„ „ 17. Permitting gaming, unlawful games or betting, *ante*, p. 167.

„ „ 35. Not admitting constable under search warrant, *ante*, 178.

Ch. VIII. Sects. 27, 28. Selling during prohibited hours, *ante*, pp. 148, 149.

2. *Cases in which the Licences are forfeited:*

Licences forfeited.

Ch. IX. Sect. 3. Selling liquor without licence, *ante*, pp. 155, 156.

35 & 36 Vict.
c. 94.

Ch. IX. Sect. 9. Making internal communication
between houses, *ante*, p. 160.

„ „ 15. Permitting premises to be a
brothel, *ante*, p. 165.

Licensed
persons dis-
qualified.

3. *Cases in which the licensed Persons are dis-
qualified from holding a Licence for various
terms:*

Ch. IX. Sect. 3. Selling liquor without licence,
ante, pp. 155, 156.

„ „ 15. Permitting premises to be a
brothel, *ante*, p. 165.

Under other
acts.

Besides these, there are similar powers given by
other acts, viz.,—32 & 33 Vict. c. 27, s. 11, and 33 &
34 Vict. c. 29, s. 14 (Chap. XI.), and 34 & 35 Vict.
c. 112, s. 10 (*ante*, p. 183, Chap. IX.).

General
enactments of
the 35 & 36
Vict. c. 94.

Forfeiture of
licence and disqualifica-
tion on third
conviction.
Ib. s. 30.

The following are the general enactments of the 35
& 36 Vict. c. 94:—

Sect. 30. “If any licensed person on whose licence
two convictions for offences committed by him against
this act have been recorded is convicted of any offence
which is directed by this act to be recorded on his
licence (*a*), the following consequences shall ensue;
that is to say,

- (1.) The licence of such licensed person shall be
forfeited, and he shall be *disqualified* for a
term of five years from the date of such third
conviction from holding any licence (*b*); and
- (2.) The premises in respect of which his licence
was granted shall, unless the court having
cognizance of the case in its discretion thinks
fit otherwise to order, be disqualified from
receiving any licence for a term of two years
from the date of such third conviction (*c*):

Provided that nothing in this section contained shall prevent the infliction by the court of any pecuniary penalty *or* any term of imprisonment to which such licensed person would otherwise be liable, *or* shall preclude the court from exercising any power given by any other section of this act of disqualifying such licensed person *or* such premises for a longer period than the term mentioned in this section."

35 & 36 Vict.
c. 94.

But not to
prevent other
punishment.

Ib. s. 30.

(a) By the Licensing Act, 1872, it was directed that convictions for the following offences, viz.:—(1) allowing the buyer of intoxicating liquor to drink it on, or on a highway near to, the premises, when they are not licensed for consumption thereon; (2) taking liquor from premises not licensed for consumption thereon to other premises for sale or consumption; (3) making internal communication between licensed and unlicensed houses; (4) permitting drunkenness on the premises; (5) permitting the premises to be the resort of prostitutes; (6) harbouring constables while on duty or bribing them; (7) permitting gaming, unlawful games, or betting on the premises; (8) keeping the premises open, or selling intoxicating liquor, during prohibited hours; (9) adulterating liquor; and (10) preventing entry of constable on the premises,—should be recorded on the licence of the person convicted, unless (but only in cases 4, 5, 6, 7, 8) the convicting magistrates should otherwise direct; but now, by s. 33 of the Act of 1874, the sections relating to those offences are repealed as far as relates to the records of convictions on licences, and new provisions are made by s. 13, *post*, p. 192.

Sect. 32, *post*, p. 191, limits evidence as to convictions to five years, and sect. 33, p. 192, applies to an omission to record conviction on licence. See sect. 55, *post*, pp. 193—195, as to mode of recording convictions; and sect. 57, *post*, p. 195, as to discretion of justices in recording them where more than one offence has been committed on the same day. When the premises are ordered to be disqualified, see sect. 56, *post*, p. 225 (Chap. XIII.), as to service of the order on the owner, who may appeal against it.

(b) *Vide* form of order forfeiting licence and disqualifying holder of licence, No. 35, *post*, p. 196.

(c) *Vide* form of order of premises being disqualified, No. 36, *post*, p. 197; and the addition that disqualification is not to follow on conviction, No. 37, *post*, p. 197.

Sect. 31. "The following additional provisions shall be enacted with respect only to convictions of persons who may *hereafter* become licensed in respect of premises, and shall not apply to a conviction of any per-

Disqualifica-
tion of pre-
mises licensed
after 10th
August, 1872,
on conviction
of successive
tenants.
Ib. s. 31.

35 & 36 Vict.
c. 94.

1b. s. 31.

son licensed for any premises *at the passing of this act* so long as he is licensed in respect of the same premises; viz.,

1. The second and every subsequent conviction recorded on the licence of any *one* such person shall also be recorded in the register of licences against the premises (a):
2. When four convictions (whether of the same *or* of different licensed persons) have within five years been so recorded against premises, those premises shall during one year be *disqualified* for the purpose of this act (b):
3. If the licences of *two* such persons licensed in respect of the same premises are *forfeited* within any period of two years, the premises shall be *disqualified* for one year from the date of the last forfeiture (c):

Notice to be
given to the
owner.

1b.

Provided that where any premises are *disqualified* under this section notice of such disqualification shall be served upon the owner of the premises in like manner as an order of disqualification is required to be served under this act (d),—and the regulations for the protection of the owner of premises in case of an order of disqualification shall, so far as the same are applicable, extend to the case of disqualification under this section" (e).

This section refers only to those persons who were licensed on the 10th August, 1872, and while they continue to be licensed for the same premises.

(a) See sect. 36, *ante*, p. 129, as to the register of licences, and note (a) under sect. 30, *supra*, as to recording a conviction on the licence as well as on the register. In the cases to which this section applies the convictions must also be recorded on the register.

(b) See form of order disqualifying premises on recorded conviction, No. 38, *post*, p. 197, recommended, although the disqualification follows by operation of the section.

(c) See form of order disqualifying premises on forfeiture of

the licences of two successive tenants, No. 89, *post*, p. 198, recommended, although the disqualification follows by operation of the section.

35 & 36 Vict.
c. 94, s. 31.

(d) Notice to owner of disqualification of licensed premises, No. 40, *post*, p. 198, recommended to be given in all cases.

(e) For the manner of serving the notice, see sect. 70, *ante*, p. 37. The regulations referred to are contained in sect. 56, set out in Chap. XIII., pp. 225, 226, and require the order to be served on the owner, against which he may appeal.

Where any licensed person is convicted for the first time of any one of the following offences,—

Temporary
continuance
of licences
forfeited
for single
offences.
37 & 38 Vict.
c. 49, s. 15.

1. Making an internal communication between his licensed premises and any unlicensed premises ;
2. Forging a certificate under the Wine and Beer-house Acts, 1869 and 1870 ;
3. Selling spirits without a spirit licence ;
4. Any felony ;

and in consequence either becomes personally disqualified or has his licence forfeited, there may be made by or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a licence in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority and to the grant of licences at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.

A conviction for any offence under this act shall not after five years (a) from the date of such conviction be receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture.

Conviction
after five
years not to
increase
penalty.
35 & 36 Vict.
c. 94, s. 32.

35 & 36 Vict.
c. 94.

Ib. s. 32.

Omission to
record con-
viction on
licence.

Ib. s. 33.

This section appears to apply to a pecuniary penalty and a forfeiture of the licence of the licensed person, but not to a disqualification of him or the premises.

(a) It was three years in the repealed enactment, 33 & 34 Vict. c. 29, s. 5.

Sect. 33. "Where a conviction for an offence is by this act (b) directed to be recorded on the licence of any person, the fact of no such record having been made shall not, if such conviction be otherwise proved to the satisfaction of the court having cognizance of any case under this act, exempt such person or the premises occupied by him from any penalty to which such person or premises would have been subject if such record had been duly made. And on such proof being given the omitted conviction may be recorded accordingly, and shall be deemed to have been duly recorded in accordance with this act."

(b) See note (a) to sect. 30, *ante*, p. 189, for the cases in which it is compulsory or discretionary with the convicting justices to cause the conviction to be recorded on the register and licence. See sect. 55, *infra*. See also 37 & 38 Vict. c. 49, s. 13, *infra*.

Penalty for
defacing
record of con-
viction.

Record of
convictions
on licences.
37 & 38 Vict.
c. 49, s. 13.

Sect. 34, *ante*, p. 170, imposes a penalty for defacing the record of a conviction on a licence.

Where any licensed person is convicted of any offence against the principal act which by such act was to have been or might have been endorsed upon the licence, or of any offence against this act, the court before whom the offender is brought shall cause the register of licences in which the licence of the offender is entered, or a copy of the entries therein relating to the licence of the offender, certified in manner prescribed by section fifty-eight of the principal act, to be produced to the court before passing sentence, and after inspecting the entries therein in relation to the licence of the offender, or such copy thereof as aforesaid, the court shall declare, as part of its sentence, whether it

will or will not cause the conviction for such offence to be recorded on the licence of the offender, and if it decide that such record is to be made, the same shall be made accordingly (a).

37 & 38 Vict.
c. 49.
Ib. s. 13.

A declaration by the court that a record of an offence is to be made on a licence shall be deemed to be part of the conviction or order of the court in reference to such offence, and shall be subject accordingly to the jurisdiction of the court of appeal.

Ib.

A direction by the court that a conviction for an offence is to be recorded on the licence of the offender shall, for the purposes of the principal act, be deemed equivalent to a direction or requirement by the act that such conviction is to be recorded; and all the provisions of the principal act importing that convictions are required or directed by the act to be recorded on the licence of an offender shall be construed accordingly.

Ib.

With respect to the record of convictions of licensed persons for offences under this act (*the Act of 1872*) committed by them as such, the following provisions shall have effect in cases where this act requires the conviction to be recorded on the licence (b); that is to say,

Recording convictions of licensed persons for offences.
35 & 36 Vict.
c. 94, s. 55.

- (1.) The court before whom any licensed person is accused shall require such person to produce and deliver to the clerk of the court the licence under which such person carries on business, and the summons shall state that such production will be required (c):

—justices to require production of licence.
Ib.

- (2.) If such person is convicted, the court shall cause the short particulars of such conviction, and the penalty imposed, to be endorsed on his licence before it is returned to the offender (d):

Indorsement on licence.
Ib.

25 & 26 Vict.
c. 94.

Entry to be
made in re-
gister.

Ib. s. 55.

Notice to
clerk of li-
censing jus-
tices.
Ib.

Notice of for-
feiture, &c. to
revenue
officer, &c.
Ib.

- (3.) The clerk to the licensing justices shall enter the particulars respecting such conviction, or such of them as the case may require, in the register of licences kept by him under this act (*e*):
- (4.) If the clerk to the court be not the clerk to the licensing justices, he shall send forthwith to the last-mentioned clerk notice of such conviction, and of the particulars thereof (*f*):
- (5.) Where the conviction of any such person has the effect of forfeiting the licence, *or* of disqualifying any person *or* premises for the purposes of this act, the licence shall be retained by the clerk of the court, and notice of such forfeiture and disqualification shall be sent to the licensing officer of the district, and if the clerk to the court is not the clerk to the licensing justices to such last-mentioned clerk, together with the forfeited licence" (*g*).

(*a*) The following case is taken from the "Times" of August, 1874 :—At Wandsworth, T. J., landlord of a licensed house, was summoned by Inspector Rowe for keeping his house open at a time when it ought to be closed. He was also summoned for attempting to bribe two police-constables while in the execution of their duty, by offering them a pint of beer not to report the case. Mr. Bridge, on looking at the new Licensing Act just in force, found that he was required, before giving judgment, to have the register containing the licences produced, or a certified copy of it. He accordingly adjourned the summons for the production of the register. Mr. Corsellis, clerk of the justices, now attended with the register, and wished to know whether he was not entitled to a fee. Mr. Bridge thought he was entitled to one, but he did not know how he could allow it, as the Act was silent in the matter. A copy of the register would do. Mr. Corsellis said he attended with the register as it was the first case. He suggested that he should be paid the fee out of the costs of the prosecution. He then handed the register to the magistrate, and said the defendant had not been convicted before. Mr. Bridge, in giving judgment, said the beer was taken out after twelve, but only one or two minutes after at the outside. It was a small

matter, and one for which the police would have been advised not to take out a summons, but attempting to bribe the police made it a serious offence. There was nothing worse for a publican to do than to attempt to bribe the police to look over a fault which he might have committed. Inspector Rowe said the defendant would have been cautioned had it not been for the attempt to bribe the constables. The defendant said it was not with any criminal intention. Mr. Bridge fined him 1*s.* and 2*s.* costs in the first case, and for attempting to bribe the police he inflicted a penalty of 5*l.* and 12*s.* costs, 10*s.* of which he ordered to be paid to Mr. Corsellis. He then referred to the Acts as to the question of endorsing the conviction on the licence, it being compulsory under the former Act, and discretionary in the latter. He said the only principle which ought to be laid down was that if it was a bad offence the conviction should be endorsed, if trivial it ought not to be. It was a bad offence to attempt to bribe the police, and he should order the conviction to be endorsed on the licence.

35 & 36 Vict.
c. 94.

(b) *Vide* note (a) to sect. 30, *ante*, p. 189, for the cases in which it was compulsory or discretionary with the convicting justices to cause the conviction to be recorded on the licence. By subsect. 3 of this section such conviction is to be entered on the register of licences. As to the keeping of this register, see sect. 36 in Chap. VII., *ante*, p. 129, and as to evidence of it, see sect. 58, note (b), *ante*, p. 131. That section, 58, providing a special mode of proving a previous conviction, which is directed by the act to be recorded either by means of the register or the indorsement on the licence, in effect supersedes in such cases the usual proof by the original conviction (the drawing up of which is not dispensed with), or an examined copy, as well as the mode provided by the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112, s. 18), (Oke's "Synopsis," 11th ed., vol. 1, pp. 165, 166); but other convictions for other offences must, when necessary, be proved in the last mode. See Chap. XII., *post*, p. 216.

Sect. 57 enacts (and is applicable to *all* convictions directed in any way to be recorded),—"Where a licensed person is convicted of more offences than one committed on the same day, the convictions for which are by this act directed to be recorded on his licence, the court by whom he is convicted may, in their discretion, order that one or some only of such convictions shall be so recorded."

As to conviction of licensed persons of more than one offence on same day.
Ib. s. 57.

(c) The Alehouse Act (9 Geo. 4, c. 91) did not authorize this, but the Beerhouse Act (4 & 5 Will. 4, c. 85, s. 10, repealed) did. Sect. 64, set out *ante*, p. 180 (Chap. IX.), also enables a justice, &c. to demand the licence. Under this subsect. that may be done on the hearing of a charge against the licensed person, or generally, as in practice, in the summons issued to appear and answer the information. *Vide* Chap. XII., *post*, p. 215.

(d) A form for this indorsement is given, *post*, p. 199, No. 41.

35 & 36 Vict.
c. 94.

(e) See as to this register, Chap. VII., *ante*, p. 129.

(f) A form of this notice is given, *post*, p. 199, No. 42.

(g) A form of this notice is given, *post*, p. 200, No. 43. The "licensing officer" is the inland revenue officer defined by sect. 74, *ante*, p. 26. The notice to the revenue officer was formerly required by the Beerhouse Act (3 & 4 Vict. c. 61, s. 17, repealed).

Temporary
licence pend-
ing appeal
against a for-
feiture of it.
Ib. s. 53.

Sect. 53, set out *post*, p. 220, Chap. XII., provides (*inter alia*) for a temporary licence being granted by the convicting justices who have ordered a forfeiture of the licence, against which forfeiture an appeal is made. See also 37 & 38 Vict. c. 49, s. 15, *ante*, p. 191.

Appeal by
owner against
disqualifica-
tion of pre-
mises.

Sect. 56, which allows an owner of licensed premises to appeal against an order disqualifying the premises from having a licence, is given in Chap. XIII., *post*, p. 225.

Avoidance of
excise licence
on forfeiture
of justices'
licence.

Sect. 63. "Where a licence is forfeited in pursuance of this act, *or* becomes void under any of the provisions of this act, any licence for the sale of intoxicating liquors granted by the commissioners of inland revenue to the holder of such licence shall be void."

This enactment was absolutely necessary to prevent any evasion of excise penalties, for otherwise the excise licence would be existing during its currency, although the justices' licence had been forfeited.

See the commencement of this Chapter, *ante*, p. 187, for the instances in which a licence is forfeited under the act, and sect. 44, *ante*, p. 41, when it becomes void by the holder or the premises being disqualified.

FORMS.

(35) Order
forfeiting
licence and
disqualifying
holder (Ib. s.
30, subs. 1).

* First
asterisk.

— } Be it remembered, that on this day of at
to wit. } at a petty sessions for the division of in the said
county there holden, it duly appears to us the undersigned [two]
of her Majesty's justices of the peace for the said county present
thereat,* that on the licence of A. B. of, &c., for the sale by
retail of [*as in the licence*] at the house [*or shop*] and premises
situated in in the said parish of , two convictions have

been recorded, as directed by the Licensing Acts, 1872 and 1874, to wit, a conviction on the day of for the offence of against section of the said act, and a conviction on the day of for the offence of against section of the same act: and the said *A. B.* having this day been convicted before us of the offence of against section of the said act,* the said licence of the said *A. B.* is forfeited, and the said *A. B.* is disqualified for the term of five years from this day from holding any licence for the sale of any intoxicating liquor, pursuant to section thirty of the aforesaid act; and we accordingly do order that the licence of the said *A. B.* shall be forfeited, and that he shall be disqualified as aforesaid for the term of five years.

35 & 36 Vict.
c. 94;
37 & 38 Vict.
c. 49.

* Second
asterisk.

Given under our hands and seals at the petty sessions above mentioned.

[*Justices' signatures and seals.*]

[*Proceed to the second asterisk* in Form No. 35, supra, and then:*] the said premises in respect of which the said licence was granted have become disqualified from receiving any licence for the sale of any intoxicating liquor for the term of two years from this day pursuant to section thirty of the aforesaid act; and we do order that the said premises shall be disqualified accordingly.

(36) Order of premises being disqualified (35 & 36 Vict. c. 94, s. 30, sub. 2).

Given under our hands and seals, &c. [*as No. 35*].

[*Proceed to the second asterisk * in the Form No. 85, supra, and then:*] the said premises in respect of which the said licence was granted are liable by section thirty of the aforesaid act to be disqualified from receiving any licence for the sale of any intoxicating liquor for the term of two years from this day, but we in the exercise of the discretion given us think fit to order and do accordingly order that the said premises shall not be disqualified as above mentioned.

(37) Order that disqualification of premises is not to follow upon a third conviction (*Id.*).

Given under our hands and seals, &c. [*as No. 85*].

[*Proceed to the first asterisk * in the Form No. 85, supra, and then:*] that four convictions have within five years last past been recorded in the register of licences kept pursuant to the Licensing Acts, 1872 and 1874, in the licensing district of in the said [*county*] against the premises situated at in the said division and district in and for which one *A. B.* was licensed to

(38) Order disqualifying premises on four recorded convictions within five years (*Id.* s. 31, sub. 2).

25 & 26 Vict.
c. 94.

sell by retail [*as in the licence*], to wit, a conviction of the said *A. B.* on the day of for the offence of against section of the said act; one conviction of [*C. D.*] on the day of for the offence of against section of the said act; one conviction of the said [*C. D.*] on the day of for the offence of against section of the said act; and one conviction of the said [*C. D.*] on the day of [before us] for the offence of against section of the said act: And the said premises having pursuant to section thirty-one of the aforesaid act become disqualified for one year from receiving any licence for the sale of any intoxicating liquor, we do order that the said premises shall be disqualified accordingly.

Given under our hands and seals, &c. [*as No. 35, supra*].

(39) Order
disqualifying
premises on
forfeiture of
the licences of
two succes-
sive tenants
(*Id. sube. 3*).^a

[*Proceed to the first asterisk * in the Form No. 35, supra, and then:*] that there have been forfeited pursuant to the Licensing Act, 1872, within the period of two years last past, the licences of two persons licensed in respect of the house [*or shop*] and premises situated at in the said division, to wit, of one *A. B.* licensed on the day of for the sale of [*as in the licence*] and of one *C. D.* for the sale of [*as in the licence*], the said licence of the said *A. B.* having been forfeited on the day of by reason of two convictions being recorded and of a third conviction on the last-mentioned day thereon; and the said licence of the said *C. D.* having been forfeited on the day of by reason of two convictions being recorded thereon and of a third conviction on the last-mentioned day: And the said house [*or shop*] and premises having pursuant to section thirty-one of the said act become disqualified for one year from the said day of [*the last forfeiture*] from receiving any licence for the sale of any intoxicating liquor, we do order that the said premises shall be disqualified accordingly.

Given under our hands and seals, &c. [*as No. 35, supra*].

(40) Notice
from justices'
clerk to the
owner of pre-
mises of an
order dis-
qualifying
premises (*Id.*
s. 31), and of
petty sessions
for hearing
appeal
against it (*Id.*
s. 56).

Division of [county].

To *L. M.*, of

Take notice, that the justices of this division at a petty session held this day [*or on the* day of instant], have pursuant to section thirty [*or thirty-one*] of the Licensing Act, 1872, made an order of disqualification of the house [*or shop*] and premises at for which one *A. B.* holds a [beer] licence, and of which premises you are registered as owner, of which order a copy is annexed hereto:

^a See form of order cancelling this order, *post*, p. 229.

And further take notice, that the justices of this division will hold a petty session on the _____ day of _____ at _____, at which you may appear and appeal against the said order on all or any of the grounds stated in the fifty-sixth section of the said act.

35 & 36 Vict.
c. 94.

By order of the justices,
[Place and date.] J. C., clerk of the petty sessional
division of _____

[Place and date.]

The within licensed person has this day been convicted before J. S. and J. L., Esquires, of the offence of [stating it and date shortly] under section _____ of the Licensing Act, 1872 (or 1874), and adjudged to pay, &c., [or as the case may be], and to be disqualified, or the premises to be disqualified, for [as the case may be].

(41) Indorsement of a conviction on a licence (*Id.* s. 25, suba. 2).

J. C., clerk of the petty sessional
division of _____

To Mr. J. B., clerk of the licensing justices for the division of [county].

(42) Notice to clerk of licensing justices of recorded convictions on a licence (*Id.* suba. 4).

I beg to give you notice pursuant to section 55, sub-section 4 of the Licensing Act, 1872, that A. B., of &c., a licensed victualler [or as the case may be], was this day convicted before J. S. and J. L., Esquires, two of the justices in petty sessions of the offence of [stating it and date shortly] under section _____ of the said act, and adjudged to pay, &c. [stating the terms of it or of any order of disqualification made]; and that the said conviction has been recorded and endorsed on the licence of the said A. B.

Dated at _____ this _____ day of _____ 187 ____
J. C., clerk of the petty sessional
division of _____

To the officer of inland revenue at _____ appointed to issue licences under the Licensing Act, 1872 [and to Mr. J. B., clerk of the licensing justices for the division of _____ county].

(43) Notice to the excise and clerk of licensing justices of a forfeiture or disqualification (*Id.* suba. 5).

I beg to give you notice, pursuant to section 55, subsection 5 of the Licensing Act, 1872, that A. B., of &c., a licensed victualler [or as the case may be], was this day convicted before J. S. and J. L., Esquires, two of the justices in petty sessions, of the offence of—[stating it and date shortly] under section _____ of the said act, and [amongst other things], pursuant to section 30, subsection 1, or 2 [or section 31, subsection 2, or 3] of the said act, the said justices ordered that the licence of the said

Ch. 10.—Repeated Convictions, &c.

25 & 26 Vict. *A. B.* for the sale by retail of [*as in the licence*] should be
 c. 94. forfeited,

Id. s. 25,
 subs. 5.

[*Or* ordered that the said *A. B.* should be disqualified for the term of years from the day of from holding any licence for the sale of any intoxicating liquor.

[*Or* ordered that the said premises should be disqualified from receiving any licence for the sale of any intoxicating liquor for the term of years from the day of].

which said forfeited licence I retain in my custody [*or if the clerk to the convicting justices is not the clerk of the licensing justices, say, I herewith transmit to you the said J. B.*]

Dated at this day of 187 .

J. C., clerk of the petty sessional
 division of

CHAPTER XI.

PENALTIES INCURRED BY UNLICENSED PERSONS FOR OFFENCES.

THE 11 & 12 Vict. c. 43, s. 5 (set out *ante*, p. 154),
equally applies to the offences described in this
chapter. Accessories
to all offences
punishable as
principals.

- (1.) *Offences punishable under the Licensing Act,*
1872, *infra*.
- (2.) *Offences punishable under other Acts*, p. 207.

-
- (1.) *Offences punishable under the Licensing Act,* 35 & 36 Vict.
1872. c. 94.

Offenders prosecuted under this act cannot be pro-
secuted under any other (sect. 59, *ante*, p. 24). The
present act does not, therefore, operate as a repeal of
other acts imposing different penalties or punishments
for the same offences. Preliminary
observations ;

Reference, when necessary, should be made to
Chap. I. for the definitions of the terms used in this
division of this chapter, "licensed premises," "un-
licensed premises," "intoxicating liquor," "court," &c.;
also sect. 62 in note (a), p. 157, as to "proof of sale." —definitions
of terms be-
fore given
applicable;

The mode of recovery of all the penalties is dealt
with especially in Chap. XII., p. 210. The defendant
and his wife in all cases under the act are competent to
give evidence (sect. 51, subsect. 4, in same chapter). —recovery of
penalties ;
—defendant
a competent
witness.

35 & 36 Vict.
c. 94.

Illicit sales.

Occupier of
unlicensed
premises
liable for sale
without
licence.

Ib. s. 4.

The sect. 3, *ante*, pp. 155—157 (Chap. IX.), it will be seen, applies also to an unlicensed person selling, &c. intoxicating liquor.

Sect. 4. "The occupier of any unlicensed premises on which any intoxicating liquor is sold, *or* if such premises are occupied by more than one person, every occupier thereof shall, if it be proved that he was privy or consenting to the sale, be subject to the penalties imposed upon persons for the sale of intoxicating liquors without licence."

Sect. 3, *ante*, pp. 155—157, relates to occupiers and non-occupiers who sell without licence; this section to a sale by a *third person*, to which the unlicensed person is privy, just as he would be liable under the General Excise Act, 6 Geo. 4, c. 81, s. 27. He will, under this enactment, be liable to the same penalties as imposed by sect. 3.

Sale to be by
standard
measure.

Ib. s. 8.

Making in-
ternal com-
munication,
&c.

Ib. s. 9.

Sect. 8, *ante*, p. 159 (Chap. IX.), applies also to an unlicensed person selling otherwise than by a standard measure.

Sect. 9, *ante*, p. 160 (Chap. IX.), as to making an internal communication between licensed premises and places of public resort, equally applies to an unlicensed person.

Painting
name and
word "li-
censed," &c.
on premises
when not
authorized.

Ib. s. 11.

Persons found
drunk in a
highway or
public place,
&c.

Ib. s. 12.

Sect. 11 (set out *ante*, p. 161, Chap. IX.) imposes a penalty on any person who "shall have any words or letters on his premises importing that he is authorized as a licensed person to sell any intoxicating liquor which he is not in fact authorized to sell."

Sect. 12. "Every person found drunk in any highway or other public place (*a*), whether a building *or* not,—*or* on any licensed premises (*b*),—shall be liable to a penalty not exceeding ten shillings,—and on a second conviction within a period of twelve months shall be liable to a penalty not exceeding twenty shillings,—and on a third or subsequent conviction

within such period of twelve months be liable to a penalty not exceeding forty shillings (c). 35 & 36 Vict. c. 94.

Every person who in any highway *or* other public place (d), whether a building or not, is guilty while drunk of riotous *or* disorderly behaviour,—*or* who is drunk while in charge on any highway or other public place (e) of any carriage, horse, cattle *or* steam engine,—*or* who is drunk when in possession of any loaded firearms,—may be apprehended, and shall be liable to a penalty not exceeding forty shillings, *or* in the discretion of the court (f) to imprisonment with *or* without hard labour for any term not exceeding one month.

Penalties for first and subsequent offences.
Ib. s. 12.

Where the court commits any person to prison for nonpayment of *any* penalty under this section, the court may order him to be imprisoned with hard labour.”

Hard labour.
Ib.

For the purpose of so much of the principal act as relates to offences against public order, that is to say, sections twelve to eighteen, both inclusive, and the sections for giving effect to the same, a person taking out an occasional licence shall be deemed to be a licensed person within the meaning of the said sections, and the place in which any intoxicating liquors are sold in pursuance of the occasional licence shall be deemed to be licensed premises, and to be the premises of the person taking out such licence.

Offences on premises with occasional licence.
37 & 38 Vict. c. 48, s. 20.

Section 12 of 35 & 36 Vict. c. 94, deals in the first paragraph with,—

- (1) Mere drunkenness, not in any building, to which 21 Jac. 1, c. 7 (sect. 4 in Vol. I. of “Revised Statutes,” p. 699, repealed by 35 & 36 Vict. c. 94, *ante*, p. 19), related :
 - (2) Drunkenness in a highway or public place :
 - (3) Drunkenness on licensed premises :
- and in the second paragraph with,—
- (4) Drunkenness in a highway or public place, accompanied with riotous or disorderly behaviour :
 - (5) Drunkenness while the offender is in charge on a highway, &c. of a carriage, horse, cattle, or steam-engine : and,

35 & 36 Vict.
c. 94.

Sect. 12.

Justices to
hear charges.

Other acts
providing a
punishment
for drunken-
ness.

(6) Drunkenness anywhere when the offender is in possession of loaded firearms:

and by increased penalties to those in the acts repealed, and with "hard labour" superadded.

In all these cases the justices hearing them are not disqualified by reason of interest, relationship, &c. as they are in licensing houses and hearing other charges under the act, as the sect. 60, *ante*, pp. 34, 35, especially excepts these cases.

In the three first cases (1, 2 and 3) one justice only may hear and convict under the 11 & 12 Vict. c. 43, s. 12, but the defendant cannot be apprehended in the commission of the offence. In the other cases (4, 5, and 6) two justices out of the metropolis are necessary (see sect. 51, subsect. 1, set out in Chap. XII., *post*, p. 210), and the defendant can be apprehended in the commission of the offence. If not apprehended, he can be proceeded against by summons in the usual way.

Besides the penalties imposed by this section 12 and sect. 18, *infra*, as to drunkards not quitting houses, there are other provisions as to drunkenness, under which offenders may be apprehended without warrant, which are still in force in different districts, and remain unaffected by it (see sect. 59, *ante*, p. 24), viz.,—

- (1) By the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, s. 29, for being "drunk in any street, and guilty of any riotous or indecent behaviour therein," or "guilty of any violent or indecent behaviour in any police office or any police station house:"
- (2) By the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 58, and in the City Police Act, 2 & 3 Vict. c. xciv, s. 37, for being "found drunk in any street or public thoroughfare, and who while drunk shall be guilty of any riotous or indecent behaviour,—and also every person who shall be guilty of any violent or indecent behaviour in any police station house:"
- (3) By the Hackney and Stage Carriage Act of the Metropolis, 6 & 7 Vict. c. 86, s. 28, every driver, conductor or waterman "who during his employment shall be drunk."

It should here be remembered that the defendant and his wife are competent witnesses in any case under the 35 & 36 Vict. c. 94, and not in cases under any other act (sect. 51, subsect. 4 in Chap. XII.), and that the defendant cannot be convicted unless upon the precise charge for which he is summoned (*Martin v. Pridgeon*, 28 L. J. (N. S.) M. C. 179; 33 Law T. 119; *Soden v. Cray*, 7 Law T., N. S. 324).

Meaning of
"other public
place."

(a) "Other public place" means, in regard to its position in this paragraph, a street, or highway, or a building or place used as a market, or a railway station, or other places where the public have a right to be without payment. The decisions on the words "open and public place," in the Vagrant Act, 5 Geo. 4, c. 83, s. 4, which also there follow the word "highway," &c., bear upon this point. In *Reg. v. Holmes* (1 Dears. C. C., N. S.

207; 22 L. J. (N. S.) M. C. 122), an omnibus was held to be a public place for the purpose of an indictment at common law for an indecent exposure of the person. In *Re Freestone* (25 L. J. (N. S.) M. C. 21), the point was taken and decided that a railway carriage was not such a place within that act; but the conviction in that case was loosely drawn, and from the observations of Pollock, C. B., it would appear that if the conviction had shown the carriage to be on the line of the railway, it would have been good as being on a highway; and so, indeed, would have been the omnibus in the previous case. The decisions on the words "place of public resort," also used in the Vagrant Act, are hardly applicable to this section. They were, *Ex parte Davis* (26 L. J. (N. S.) M. C. 178), that the platform of a railway station is such a place; *Sewell v. Taylor* (29 L. J. (N. S.) M. C. 50; 1 Law T., N. S. 37) decided that a place need not be permanently or continuously public in its nature, and that private premises on which a sale by public auction is held on a particular occasion are, for that occasion, a place of public resort. It is not necessary now to refer to *Cole v. Coulton* (29 L. J. (N. S.) M. C. 125; 2 Law T., N. S. 216), as all "licensed premises" are now specially mentioned in this section.

35 & 36 Vict.
c. 91.

Sect. 12.

(b) See definition of "licensed premises" in sect. 74, *ante*, p. 25, which now include all the houses, &c. for which licences or certificates are now required from justices. See note (g) to "Licence," *ante*, p. 32.

(c) The proof of the previous conviction or convictions required to be given in cases under this section, as the offences are not recorded on any licence or register of licences, will be in the mode provided by the previous law, and 34 & 35 Vict. c. 112, s. 18, which is referred to in note (a), *ante*, p. 195.

(d) See note (a), *supra*.

(e) This, of course, is not in a building, but would include a railway station, market, or other like place.

(f) The "court" here mentioned is the "court of summary jurisdiction," defined by sect. 74, *ante*, p. 28, and referred to in note (c) thereto, *ante*, p. 33. Two justices out of the metropolis are required in the cases under this second paragraph of sect. 12; but *one* only in the cases under the first paragraph. See sect. 51, subsect. 1, in Chap. XII, *post*, p. 210.

See sect. 18, *ante*, p. 164 (Chap. IX.), for the power of licensed persons to exclude a person "who is drunken, violent, quarrelsome, or disorderly," on his premises, or "any person whose presence on his premises would subject him to a penalty under this act." If such person "upon being requested by such licensed person, or

Drunkards
refusing to
quit premises.
Ib. s. 18.

35 & 36 Vict.
c. 94.

his agent or servant, *or* any constable, to quit such premises, refuses *or* fails so to do," he is liable to the penalty there mentioned, and on the nonpayment of the penalty to be imprisoned for the term authorized "with hard labour."

Penalty on
person found
on premises
during closing
hours.

Ib. s. 25.

Sect. 25. "If, during any period during which any premises are required under the provisions of this act to be closed (*a*), any person is found on such premises, he shall, unless he satisfies the court that he was an inmate, servant, *or* a lodger on such premises, *or* a bonâ fide traveller, *or* that otherwise his presence on such premises was not in contravention of the provisions of this act with respect to the closing of licensed premises (*b*), be liable to a penalty not exceeding forty shillings.

Penalty.
Ib.

Constable
may demand
his name, and
in certain
cases apprehend him.

Ib.

Any constable may demand the name and address of any person found on any premises during the period during which they are required by the provisions of this act to be closed,—and if he has reasonable ground to suppose that the name or address given is false, may require evidence of the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, *or* such evidence, apprehend him without warrant, and carry* him, as soon as practicable, before a justice of the peace (*c*).

* *Sic.*

Ib.

Penalty for
not giving
name;

Ib.

Any person required by a constable under this section to give his name and address who fails to give the same, *or* gives a false name or address, *or* gives false evidence with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

—*or* for
falsely pre-
tending to be
a traveller *or*
lodger.

Ib.

Every person who by falsely representing himself to be a traveller *or* a lodger buys *or* obtains *or* attempts to buy *or* obtain at any premises any intoxicating liquor during the period during which such premises

are closed in pursuance of this act, shall be liable to a penalty not exceeding five pounds" (d). 35 & 36 Vict.
c. 94.
1b. s. 25.

The previous enactments on the subject of this section were not so comprehensive and were the 32 & 33 Vict. c. 27, s. 16, and 33 & 34 Vict. c. 29, s. 6 (both repealed). See sect. 18, *ante*, p. 164, as to the power of the licensed person to turn out a person who is drunk, or not a traveller or lodger.

(a) See these provisions in Chap. VII., *ante*, p. 133.

(b) As to these provisions,—the prevention of selling or keeping open *for the sale* of intoxicating liquors, see notes *ante*, pp. 140—142.

(c) The justice, if out of the metropolis, could remand the defendant under 11 & 12 Vict. c. 43, and the case could then be heard before the justices at petty sessions (sect. 51, suba. 1, Chap. XII.). If not apprehended he can be proceeded against by summons in the ordinary way.

(d) Further, with regard to *bonâ fide* travellers, see 37 & 38 Vict. c. 49, s. 10, *ante*, pp. 139, 140.

As to a search warrant for the detection of liquor sold or kept contrary to law, see 37 & 38 Vict. c. 49, s. 17, *ante*, pp. 178, 179.

The penalty in 37 & 38 Vict. c. 49, s. 16, *ante*, p. 178 (Chap. IX.), for refusing admission to a constable, on demand, requiring to enter licensed premises under a justice's warrant or otherwise, or not allowing him to take an account of intoxicating liquor found there, &c., is applicable also to unlicensed persons. Refusing admission to constable searching for liquor.
37 & 38 Vict.
c. 49, s. 16.

The offence of a clerk of the licensing justices, or any other person preventing inspection, &c. of the register of licences, enacted by sect. 36, is set out *ante*, p. 130 (Chap. VII.). Clerk to justices, &c. refusing inspection of register of licences.
35 & 36 Vict.
c. 94, s. 36.

2. *Offences punishable under other Acts.*

The penalties imposed on clerks to justices for taking more than the fees allowed (in addition to that under 35 & 36 Vict. c. 94, s. 36, *ante*, p. 130), are:— Clerks to justices taking greater fees than allowed.

9 Geo. 4, c. 61, s. 15, set out *ante*, p. 66.

33 & 34 Vict. c. 29, s. 4, subs. 3, set out *ante*, p. 104.

32 & 33 Vict.
c. 27, s. 11.

Punishment
for forging
justices' cer-
tificate under
Wine and
Beerhouse
Acta.

By 32 & 33 Vict. c. 27, s. 11,—“If any person forge, *or* tender knowing the same to have been forged, any certificate authorized to be granted by this act(*a*), he shall, on summary conviction before two or more justices, be liable to a penalty not exceeding twenty pounds, *or*, in the discretion of the justices before whom he is tried, to imprisonment for any period not exceeding six months, with or without hard labour. Any licence granted in pursuance of such forged certificate shall be void, and any person making use of such forged certificate, knowing the same to have been forged, shall be disqualified from obtaining at any time thereafter a licence for the sale of beer, cider *or* wine by retail under any of the said recited acts.”

The prosecution for the offences must be commenced within six months as provided by 11 & 12 Vict. c. 43, s. 11; and the other sections of that act as to the other necessary proceedings, the appropriation of the penalty, and the recovery of costs where absolute imprisonment adjudged, &c., will be applicable. See them in Chap. XII, *post*, p. 210. When the penalty imposed is not exceeding 5*l*. the scale of imprisonment in default of payment in 28 & 29 Vict. c. 127, s. 4, must be applied; if above 5*l*. it must be recovered by distress, and the imprisonment in default thereof is not exceeding three months (11 & 12 Vict. c. 43, ss. 19, 22).

(*a*) The certificates here referred to are those which justices were, before the 35 & 36 Vict. c. 94, authorized to grant for the sale of beer, cider or wine, as mentioned *ante*, p. 70. Further, see 37 & 38 Vict. c. 49, s. 15, *ante*, p. 191.

Persons con-
victed of
felony and
thereby dis-
qualified
taking out,
&c. licence
for spirits.

By 33 & 34 Vict. c. 29, s. 14,—“Every person convicted of felony shall for ever be disqualified from selling spirits by retail, and no licence to sell spirits by retail shall be granted to any person who shall have been so convicted as aforesaid;—and if any person shall, after having been so convicted as aforesaid, take out *or* have any licence to sell spirits by retail, the same shall be void to all intents and purposes;—and every person who, after being so convicted as aforesaid, shall sell any spirits by retail in any manner what-

Penalty.

ever shall incur the penalty for doing so without a licence" (a). 33 & 34 Vict.
c. 29, s. 14.

(a) The penalty is in sect. 3, *ante*, p. 155, Chap. IX.

Vide also excise penalties in Chap. XV., and 37 & 38 Vict. c. 49, s. 15, *ante*, p. 191. Excise penalties.

As to refreshment-houses where no intoxicating liquor is sold, see offence under 27 & 28 Vict. c. 64, s. 5, set out in Chap. XIV., *post*, p. 240. Refreshment-houses where no intoxicating liquor sold.

CHAPTER XII.

MODE OF RECOVERY OF PENALTIES, &C. (EXCEPT
EXCISE), AND APPEALS, &C.Preliminary
observations.

THE enactments and practice given in this Chapter are applicable to the recovery of all penalties, &c. imposed by the 35 & 36 Vict. c. 94, and particularly to those offences described or referred to in the first division of Chapters IX., *ante*, p. 154, and XI., *ante*, p. 201. The 11 & 12 Vict. c. 43, called in the 35 & 36 Vict. c. 94, ss. 51, 74, the "Summary Jurisdiction Act, 1848," contains most of the law and practice in relation to summary proceedings, and especially incorporated into the 35 & 36 Vict. c. 94, by sect. 51, which we now proceed to give, detailing the practice in an abbreviated form in the notes in the natural order of procedure.

- (1) *Mode of Recovery of Penalties, &c.*, *infra*.
- (2) *Appeals against a Conviction or Order*, p. 218.
- (3) *Appeal by Owner against Disqualification of Premises*, p. 220.

35 & 36 Vict.
c. 94.Summary
proceedings
for offences
under this
act, &c.

Ib. s. 51.

(1) *Mode of Recovery of Penalties, &c.*

By 35 & 36 Vict. c. 94, s. 51, "except as in this act otherwise expressly provided, every offence under this act may be prosecuted, and every penalty and forfeiture may be recovered and enforced, in manner provided by the Summary Jurisdiction Act, 1848 (*a*), subject to the following provisions :

Constitution
of court.
Ib.

- (1.) The court of summary jurisdiction (*a*), when hearing and determining an information or

complaint,—other than in a case where the offence charged is that of being found drunk in any highway *or* other public place, *or* any licensed premises (*b*),—shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, *or* of a stipendiary magistrate, *or* some other officer for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace (*c*), and sitting alone or with others at some court or other place appointed for the administration of justice :

35 & 36 Vict.
c. 94.

Ib. s. 51.

- (2.) Where the court of summary jurisdiction orders that a distress shall be made in default of payment of any penal sum exceeding five pounds, including under that expression costs actually adjudged in respect of an offence, the court may order that in default of the said sum being paid as directed, the person liable to pay the same shall be imprisoned for any term not exceeding the period specified in the following scale (*d*) :

Scale of imprisonment in default of distress or payment of penalty.
Ib.

For any sum exceeding five pounds but not exceeding ten pounds, three months ;

For any sum exceeding ten pounds but not exceeding thirty pounds, four months ;

For any sum exceeding thirty pounds but not exceeding fifty pounds, six months ;

For any sum exceeding fifty pounds, one year :

- (3.) The description of any offence under this act in the words of such act, or in similar words, shall be sufficient in law (*e*) :

Description of offence.
Ib.

- (4.) Any exception, exemption, proviso, excuse, or

Who to prove

35 & 36 Vict.
c. 94.

an exception,
&c.

Ib. s. 51.

Defendant
competent to
give evi-
dence.

Ib.

Disposal of
forfeitures
and applica-
tion of penal-
ties.

Ib.

Penalties
under act not
revenue
penalties.

Ib.

Revenue
officer may
sue for penal-
ties, &c.

Ib.

Costs ordered
separately
how to be
recovered.

Ib.

qualification, *whether it does or does not accompany the description of the offence* in this act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or complainant (*f*);— and in all cases of summary proceedings under this act, the defendant and his wife shall be competent to give evidence (*g*):

(5.) All forfeitures shall be sold or otherwise disposed of in such manner as the court may direct, and the proceeds of such sale or disposal (if any) shall be applied in the like manner as penalties, but the court may direct that such proceeds may be applied in the first instance in paying the expenses of and incidental to any search and seizure which resulted in such forfeiture (*h*):

(6.) Penalties and forfeitures under this act shall not, for the purpose of any act respecting the application of such penalties, or the costs, charges, and expenses attending proceedings for recovery of such penalties or of forfeitures, be deemed to be penalties or forfeitures under any act relating to the inland revenue.

Any officer appointed by the commissioners of inland revenue may sue for any penalties under this act, and when so sued for any penalties which may be recovered shall be applied in the manner in which excise penalties are for the time being applicable by law (*i*).

Where under this act any sum for costs (other than costs upon a conviction or order of dismissal of an in-

formation) or for compensation, or both, is ordered or awarded to be paid by any person, the amount thereof shall be recovered in manner directed by the Summary Jurisdiction Act, 1848, for the recovery of costs awarded upon the dismissal of an information or complaint" (*j*).

35 & 36 Vict.
c. 94.
1b. s. 51.

(*a*) The act referred to is Jervis's Act, 11 & 12 Vict. c. 43, and the acts amending it, regulating the proceedings before justices out of sessions with regard to summary convictions and orders, stated in sect. 74 under the definition of "court of summary jurisdiction," at pp. 28, 33, the provisions of which, if not given in the lettered notes, will be found under the heading of "Practice" at the close of those notes.

11 & 12 Vict.
c. 43.

(*b*) This exception refers to the cases of drunkenness in the first paragraph of sect. 12, *ante*, p. 202, Chap. XI, which, consequently, may be heard by one justice under 11 & 12 Vict. c. 43, s. 12, as the number is not fixed by this statute.

Drunkenness.

(*c*) The "other magistrate or officer" here referred to is stated in note (*c*) *ante*, p. 33, and see sects. 39 and 61, *ante*, p. 36, as to jurisdiction over waters, &c.

(*d*) In all the sections of the 35 & 36 Vict. c. 94, imposing penalties, there is no alternate imprisonment in default of payment provided, and, therefore, the penalty must be recovered by distress and sale of the defendant's goods, except where that would be ruinous, or the defendant has no goods (11 & 12 Vict. c. 43, s. 19). Where the penalty, including the costs adjudged, is not exceeding 5*l.*, the Small Penalties Act, 1865 (28 & 29 Vict. c. 127), dispenses with the distress, and lays down the following maximum terms of imprisonment in default of payment, viz. :—

Imprisonment in default of paying penalties.

28 & 29 Vict.
c. 127, to be applied where penalty not exceeding 5*l.*

For any penalty not exceeding 10*s.*, seven days;
Exceeding 10*s.* and not exceeding 1*l.*, fourteen days;
Exceeding 1*l.* but not exceeding 2*l.*, one month;
Exceeding 2*l.* but not exceeding 5*l.*, two months (see the statute and questions thereon in Oke's "Synopsis," 11th ed., vol. i., pp. 184—186).

The scale of imprisonment in subsect. 2 when the penalty, including costs, is above 5*l.*, and is not recovered by distress or otherwise paid, comes into operation. The cost of conveying the defendant must also be paid by him (11 & 12 Vict. c. 43, ss. 19, 21, 22, 24).

Scale of imprisonment where penalty above 5*l.*

(*e*) Probably, without this enactment it would have been sufficient to state the offence in the like words of the section creating it. See *Ex parte Perham*, 29 L. J. (N. S.) M. C. 33; 1 Law T., N. S. 91; *Reg. v. Pearham*, 1 Law T., N. S. 106; *Reg. v. Hague*, 33 L. J. (N. S.) M. C. 86; 9 Law T., N. S. 648; Oke's "Synopsis," 11th ed., vol. i., pp. 132, 133).

Statting of-fence.

11 & 12 Vict.
c. 43.

Negating
exception, &c.
in the act.

(f) The previous enactment on the subject of this subsection was 11 & 12 Vict. c. 43, s. 14, set out in note (d), *ante*, p. 140 (Chap VIII.). It should be observed that it has not been the practice hitherto to negative in the information any exception, exemption, proviso, excuse, or qualification, &c., when it is not contained in the enacting clause, although at common law every exemption, excuse, or qualification which accompanies the description of the offence in the enacting clause must be distinctly and positively negated (Oke's "Synopsis," 11th ed., vol. i., p. 183). The 11 & 12 Vict. c. 43, s. 14, did not render this the less necessary; and now the subsection 4 renders it unnecessary to *specify* or negative it in any case, but provides that should it be done, no proof in relation to the matters shall be required from the informant. As we have stated (*ante*, p. 141), the effect of the enactments and the decisions is to throw the burden of proof of such matters on the defendant.

Defendant
and his wife
competent
witnesses.

(g) This is the second instance in which a defendant in a "criminal proceeding," or the wife of such defendant, is competent to give evidence, they having been excepted by the 14 & 15 Vict. c. 99, s. 3, and 16 & 17 Vict. c. 83, s. 2. *Vide* cases of *Att.-Gen. v. Radloff*, 23 L. J. (N. S.) Exch. 240; 23 L. T. N. S. 191; *Cattrell v. Ireson*, 27 L. J. (N. S.) M. C. 167; 31 Law T. 80; *Parker v. Green*, 31 L. J. (N. S.) M. C. 183; 2 B. & S. 299; 9 Cox's C. C. 169; Oke's "Synopsis," 11th ed., vol. i., pp. 71—74. Under the Master and Servant Act, 1867 (30 & 31 Vict. c. 141), s. 16, they are also competent witnesses for the purposes of that act when defendants, and one offence in it, under sect. 14, is clearly a criminal proceeding. The object of the clause in the text (which, although it is not placed as it should be in a distinct subsection, applies to the act generally) is not merely to punish the guilty; but it is also designed for the protection of the innocent; and inasmuch as in the majority of cases the only witnesses offered to prove the case against a defendant, when he is a licensed person, would be a constable, it was necessary that the defendant should have the opportunity of offering his evidence against that of the constable. The defendant, even a person charged with drunkenness, and his wife may be summoned on the part of the informant, they being placed on the same footing as other witnesses.

Application of
penalties.

11 & 12 Vict.
c. 43, s. 31.

Moiety may
be awarded
to police
superannua-
tion fund.

35 & 36 Vict.
c. 94, s. 66.

Revenue
officer suing
for penalties.

(h) As to seizures and forfeitures under search warrants, see 37 & 38 Vict. c. 94, s. 16, *ante*, pp. 178, 179. The application of penalties recovered, there being no provision thereon in the 35 & 36 Vict. c. 94 (except as to a portion in sect. 66, *infra*), will be regulated by 11 & 12 Vict. c. 43, s. 31, under which they must be paid to the treasurer of the county or borough. By sect. 66, "Any part not exceeding a moiety of any penalty recovered under this act may, if the court shall so direct, be paid to the superannuation fund of the police establishment within whose jurisdiction the offence in respect of which such penalties are imposed shall have occurred."

(i) These penalties, it is presumed, are to be proceeded for in manner provided by this section; but when recovered are to be

applied as excise penalties are applied. See application in Chap. XV., *post*. 35 & 36 Vict.
c. 94.

(j) This subsection was necessary, as there is no provision in the 11 & 12 Vict. c. 43, as supposed by many writers, for the recovery of costs alone (except upon the dismissal of an information or complaint under sects. 18 and 26 of that act, and where absolute imprisonment for an offence was adjudged), which would have enabled the costs upon an opposition to the confirmation of the grant of a new licence under sect. 43 (*ante*, p. 97, Chap. III.), or the costs of a valuation of premises for the purposes of a licence under sect. 47 (*ante*, p. 46, Chap. II.), to be recovered. The sum ordered for costs will now be recovered by distress, and in default of distress or payment the person may be imprisoned for not exceeding one month, unless sooner paid, with the costs of conveyance to prison (11 & 12 Vict. c. 43, s. 26).

Costs recovered separately.

Practice.

Under this heading we give a summary of the leading points of practice in the 11 & 12 Vict. c. 43, and other acts upon summary proceedings before justices. Practice.

The information must be laid within six calendar months after the offence committed (11 & 12 Vict. c. 43, s. 11). It may be laid by any one, or by the inland revenue officer, and the informant may do so in person, "or by his counsel or attorney, or other person authorized in that behalf" (s. 10). It may be laid without oath (except where a warrant is issued in the first instance, when it is to be on oath) (ss. 2, 10). It may be verbal; but if on oath it ought to be reduced into writing. It must be for one offence only (s. 10). See subs. 3 and note (c) thereto as to describing offence. One justice can receive an information, where two required to convict (s. 29).

Time for laying information, and by whom.

A summons or warrant may be issued to the defendant in the first instance; if a warrant, the information must be on oath (ss. 1, 2). The summons may require the licensed person to produce his licence, as authorized by sect. 64, *ante*, p. 180 (Chap. IX.), and sect. 55, subs. 1, *ante*, p. 193 (Chap. X.), by these words being placed in the margin or at the foot:—"Take notice, you are hereby required to produce and deliver before or on the hearing of this summons to Mr. J. C., the clerk to the justices, the licence under which you carry on your business as a . . ." Or a separate notice may be given.

Process to issue to defendants;

— requiring production of licence.

The summons is to be served by a constable or other person to whom it is delivered, either personally or at his last or most usual place of abode (s. 1).

Service of summons, &c

- 11 & 12 Vict.
c. 43. If summons disobeyed, a warrant can be granted upon an information on oath (s. 2). Backing of warrants (11 & 12 Vict. c. 42, s. 11; 11 & 12 Vict. c. 48, s. 3).
- Remanding
or adjourning
case. See the various provisions for remanding to gaol defendants apprehended, or bailing them before or during the hearing of a case, on account of variances between the information and evidence, where complainant not in attendance, and on adjournments generally. Oke's "Synopsis," 11th ed., vol. i., pp. 142—144.
- Summons to witnesses. Summons may be issued to witnesses for the informant (11 & 12 Vict. c. 43, s. 7), and, in practice, to those required by the defendant. The defendant and his wife may also now be summoned on the part of the informant (see subs. 4, *supra*, and note (g) thereto).
- Hearing of charges; See subs. 1 and notes (b) and (c) thereto. Two justices, at least, must hear the cases generally, and at the place of holding petty sessions,—and it is not necessary that either of them should have taken the information (s. 29).
- costs; The hearing must be in open court, where either party may appear by counsel or attorney (11 & 12 Vict. c. 43, s. 12); and it may be *ex parte* on proof of service of summons (s. 13); or if the informant do not appear, or the case is not proved, the information may be dismissed with costs to be paid by him (ss. 14, 18), recovered as in note (j), *supra* (s. 26).
- witnesses; Costs may be ordered to be paid by defendant in all cases (s. 18), and where absolute imprisonment adjudged the costs are recovered separately (s. 19). The informant is a competent witness (s. 15), and so now the defendant and his wife (subs. 4, *supra*, and note (g) thereto).
- proof of exception, &c.; The proof of any exception, &c. to the offence is on the defendant. See subs. 4, *supra*, and note (f) thereto.
- evidence of sale, convictions, &c.; As to evidence of sale, &c. of intoxicating liquor, see s. 62, note (a), *ante*, p. 157. Evidence from Register of Licences of records of convictions, disqualifications, of forfeitures, &c. and from indorsements on licences, see sect. 58, *ante*, p. 131, note (b).
- proof of previous conviction; If proof of a previous conviction which is not recorded on a licence, as required by the 35 & 36 Vict. c. 94, is necessary, the conviction should be drawn up in proper form, according to 11 & 12 Vict. c. 43, s. 17, and the original or an examined copy of it, certified by the clerk to the justices (or the clerk of the peace, if it has been returned to the quarter sessions), must be produced to the justices, and evidence given of the identity of the defendant, as provided by the Prevention of Crimes Act, 1871,

34 & 35 Vict. c. 112, s. 18 (Oke's "Synopsis," 11th ed., vol. i., pp. 165, 166). A declaration of the Court that a record of the offence is to be made on a licence is to be deemed part of the conviction or order of the Court, 37 & 38 Vict. c. 49, s. 13, *ante*, p. 193.

Powers of adjourning cases are given by ss. 13, 16.

Consecutive terms of imprisonment may be ordered on conviction for more than one offence (s. 25).

—adjourning cases;
—consecutive imprisonment.
Mitigation of penalties.
37 & 38 Vict. c. 49, s. 12

The sixty-seventh section of the principal act is hereby repealed, and in lieu thereof be it enacted, that where any person holding a licence under this or the principal act is convicted of any offence against this or the principal act, or against any of the acts recited or mentioned therein, the court may not, except in the case of a first offence, reduce the penalty to less than twenty-shillings, nor shall the penalty, whether of excise or police, be reduced in any case to less than the minimum authorized by any other act.

Any one justice of the same jurisdiction as the county justices may enforce the decision by distress warrant or otherwise (s. 29). See the manner of doing so in note (d), *ante*, p. 213.

Enforcing decision.

For the application of penalties recovered otherwise than by an inland revenue officer, see subs. 5 and note (h) thereto.

Application of penalties, &c.

By 35 & 36 Vict. c. 94, s. 54, "no conviction or order made in pursuance of this act, originally *or* on appeal, relative to any offence, penalty, forfeiture, *or* summary order, shall be quashed for want of form, or, if made by a court of summary jurisdiction, be removed by certiorari or otherwise, either *at the instance of the crown* (a) or of any private party, into any superior court. Moreover, no warrant of commitment in any such matter shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted."

Conviction, &c. not to be quashed for want of form, or removed by certiorari.
35 & 36 Vict. c. 94, s. 54.

(a) This is an entirely new enactment.

O.

L

(2) *Appeal against a Conviction or Order.*

Previous acts
as to appeals.

The Alehouse Act (9 Geo. 4, c. 61, s. 27) (repealed as to this subject), allowed an appeal in all cases, the Beerhouse Act (1 Will. 4, c. 64, s. 16), in cases of a third conviction only, and the Refreshment Houses Act (28 Vict. c. 27, s. 34), in the case of a second or third offence, against a summary conviction. These have been repealed, the first as regards such convictions, and the others wholly.

Appeal to
superior court
on a question
of law.
30 & 31 Vict.
c. 43.

Besides the appeal to the quarter sessions given by 35 & 36 Vict. c. 94, s. 52, *infra*, there is an appeal allowed to either party by the 20 & 21 Vict. c. 43, who is dissatisfied with the justices' decision, of dismissal or conviction, as being erroneous in point of law, to a superior court for their opinion, the application to the justices to state a case being made either at the time, or within three days after the decision. See statutes and cases in Oke's "Synopsis," 11th ed., vol. i., pp. 217—226; and Form No. 51, *post*, p. 222.

35 & 36 Vict.
c. 94.

Appeal to
quarter ses-
sions against
justices' order
or convic-
tion:

Ib. s. 52.
—time;

By 35 & 36 Vict. c. 94, s. 52, "if any person feels aggrieved by any order *or* conviction made by a court of summary jurisdiction (*a*), the person so aggrieved may appeal therefrom, subject to the conditions and regulations following:

- (1.) The appeal shall be made to the next court of quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days after the decision of the court from which the appeal is made:
- (2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

—notice of
appeal;
Ib.

(2) *Appeal against a Conviction or Order.*

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- (3.) The appellant, immediately after such notice, shall enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court,—*or* shall give such other security by deposit of money *or* otherwise as the justice may allow :
- (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance *or* giving such other security as aforesaid, release him from custody :
- (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof may confirm, reverse, *or* modify the decision of the court of summary jurisdiction, *or* remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, *or* make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just” (b).

35 & 36 Vict.
c. 94.

Sect. 52.
—recognizance to appeal;

—release of
defendants;
Ib.

—court may
adjourn;
Ib.

—costs.
Ib.

(a) This section is confined to an appeal against a summary conviction or an order, which appears to mean an order of disqualification of premises or persons for licences, and for payment of costs under sects. 43, 47, and cannot apply to orders of exemption or orders for closing houses, or other orders, which are not made by a “court of summary jurisdiction,” but by a different body, the licensing justices, or justices in petty sessions, and of course not when such orders are made by the police authorities. It does not affect the appeal now allowed under sect. 27 of 9 Geo. 4, c. 61, against the refusal of the licensing justices to *renew or transfer* a licence, there not being now an appeal against a refusal to grant a *new* licence (see Chap. VI, *ante*, p. 122). In the latter case the appeal is made in effect by other persons than the proposed licensed person, by opposing before the confirming authority the confirmation of the grant of

35 & 36 Vict. the new licence, sect. 43, Chap. III., *ante*, p. 97 ; in boroughs,
c. 94. sect. 38, *ante*, p. 84.

Sect. 52. (b) The costs ordered will be recovered under 11 & 12 Vict. c. 43, s. 27, which provides for the costs being paid to the clerk of the peace, and the recovery by distress warrant of a justice, and in default of distress, imprisonment not exceeding three months.

Grant of temporary licence pending appeal.
1b. s. 53.

By sect. 53 (*inter alia*, the first part of the section being given in Chap. IV., *ante*, p. 105), "Where a licence is forfeited on or in pursuance of a conviction, for an offence, and an appeal is duly made against such conviction, the court by whom the conviction was made may, by order, grant a temporary licence to be in force during the pendency of the appeal upon such conditions as they think just."

Vide Form of Temporary Licence, No. 55, *post*, p. 224.

(3) *Appeal by Owner against Disqualification of Premises.*

Appeal by owner against disqualification of premises.

The provisions hereon are contained in 35 & 36 Vict. c. 94, s. 56, in the next Chapter (Chap. XIII., *post*, p. 225).

FORMS.

(For use in the Recovery of Penalties.)*

(44) Information for an offence.

_____ } The information of C. D. of, &c. constable [*or as the*
to wit. } *case may be*], taken before me the undersigned, one
of her Majesty's justices of the peace in and for the said
[county] of † at in the same [county], this
day of 187 .

* All these forms not set out here are in Oke's "Formulist," 4th edition.

† Describe other justices as follows:—

City of London justices—the undersigned, the lord mayor [*or one of the aldermen*] of the said city, being one of her Majesty's justices of the peace in and for the same city and the liberties thereof, sitting at the Mansion House [*or Guildhall*] justice room in the said city.

A metropolitan police magistrate—one of the magistrates of the police courts of the metropolis, sitting at the police court, Great Marlborough Street, in the

(2) *Appeal against a Conviction or Order.*

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Who saith, that [he hath just cause to suspect and believe, 35 & 36 Vict.
and doth suspect and believe, that] A. B., of in the said c. 94.
[county] a licensed victualler, on the day of instant,
at the parish of in the said [county], did [*here set out
the offence in the manner described in the words of the section
creating it, or detail the circumstances of the offence without
adhering to the legal description of it*], contrary to section
of the Licensing Act, 1872 (or 1874).

•• If a warrant is granted in the first instance upon the
above information when not on oath, insert here:

The matter of the above information is now substantiated
before me, the said justice, by the oath of [the above-named
C. D. or] L. M. of, &c.

C. D.

Exhibited to [or taken before] me
the day and year and at the place
above mentioned.

J. S.

[Summons, A, adding the notice to produce the licence, given (45) Forms
in the note, ante, p. 215, under the head of "Practice;" warrant of summons
r warrant where summons disobeyed, B; and warrant in the first in- and war-
stance, C.] rants.*

[Commitments to prison, D and H; recognizance on bail, E; (46) Forms
and certificate of non-appearance, F.] on remand.*

[Summons, G 1; warrant where summons disobeyed, G 2; (47) Sum-
warrant in the first instance, G 3; and commitment for refusing mons to a
to be sworn, &c., G. 4.] witness and
warrants.*

parish of St. James, Westminster [or at Greenwich, in the county of Kent]
and within the metropolitan police district.

A stipendiary magistrate—In and for the [*here insert the district or place*],
being a stipendiary magistrate for the said [district, &c.] sitting in open court.
Of a divisional petty sessions—in petty sessions in and for the division of
N., in the said county of C., at N., in the same division and county.

Of two adjoining counties, &c.]—of and for the counties [or "ridings, divi-
sions, liberties, or city, or borough"] of C. and S., being next adjoining coun-
ties [or "ridings, divisions," &c.] [or surrounded by the said county of C., at
N., in the said county or borough, &c. of S.]

When acting for a detached part of another county—of and for the county of
C., and acting for the county of S., at N., in the said county of C., the parish
where the offence [or matter of complaint] hereinafter mentioned was com-
mitted [or arose], being a detached part of the said county of S., and sur-
rounded in part [or in whole] by the said county of C.

* These forms are given in the schedule to 11 & 12 Vict. c. 43, the "Sum-
mary Jurisdiction Act, 1848," and the letters are those attached to them in
that schedule. See Jervis's Acts by Glen, 3rd ed.

35 & 36 Vict.
c. 94.

[Order of dismissal, L; certificate thereof, M; forms for the recovery of the costs, Q 1, Q 2.]

(48) On dismissal of an information.*

(49) Convictions.*

[If the convictions are drawn up specially, independently of the register of licences, the forms are:—where a distress is to be levied for the penalty, I 1; if not to be so levied, I 2; if the punishment is absolute imprisonment, I 3.]

(50) Distress warrant and commitments for enforcing convictions.*

[Distress warrant on conviction, I 1, N 1; commitment on default of distress, N 3; commitment where distress would be ruinous, &c., No. 63, Oke's "Formulist," 4th ed., p. 37; commitment on conviction, I 2, O 1; commitment to imprisonment only, P 1, and recovery of costs, P 3 and P 5.]

(For use on appealing to a Superior Court under 20 & 21 Vict. c. 43.)

(51) Application for special case under 20 & 21 Vict. c. 43. Recognizance, Case and notices.

[These will be found in Oke's "Formulist," 4th ed., pp. 56—60.]

(For use on Appeal to Quarter Sessions under 35 & 36 Vict. c. 94, s. 52, ante, p. 218.)

(52) Notice of appeal against a conviction.

To *C. D.*, of &c., and *J. S.* and *J. L.*, Esquires, two of her Majesty's justices of the peace acting for the petty sessional division of in the county of .

Take notice, that [I the undersigned] *A. B.*, of &c., do intend to enter and prosecute an appeal at the next general [*or* quarter] sessions of the peace to be holden at in and for the [*county*] of , against a certain conviction [*or* order] bearing date on or about the day of instant, and made by you the said justices, whereby [I] the said *A. B.* was convicted upon the information of you the said *C. D.* of having as therein and thereby is alleged [*here state the offence as in the conviction, information or summons; or if the conviction be not already drawn up, for having committed such offence as in the said conviction when drawn up shall or may appear*], whereupon I was adjudged to pay the sum of [*or* to be imprisoned for the term of] [*or* and upon which conviction you ordered the licence of [me] the said *A. B.* to be forfeited, *or* the premises occupied by me to be disqualified, &c., as the case may be].

And further, take notice that the grounds of my [*or*, the said

* These forms are given in the schedule to 11 & 12 Vict. c. 43, the "Summary Jurisdiction Act, 1848," and the letters are those attached to them in that schedule. See Jervis's Acts, by Glen, 3rd ed.

(2) *Appeal against a Conviction or Order.*

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A. B.'s appeal are, first, that I am [*or the said A. B. is*] not guilty of the said offence; secondly, that [*stating other grounds, care being taken that all are stated, as the appellant will be precluded from going into any other than those stated*], of all which premises you and every of you are hereby desired to take notice.

35 & 36 Vict.
c. 94.

Dated this day of , 187 .

A. B.

[*or T. W., residing at , attorney for and on behalf of the said appellant A. B.*]

[*Proceed as in the form of recognizance, No. 24, ante, p. 127, stating the condition thus:*]

(53) Recognizance to pay appeal.

The condition of the within-written recognizance is such, that if the said *A. B.* shall [personally appear] at the next general [*or quarter*] sessions of the peace to be holden at in and for the said [*county*] of , and there enter and prosecute an appeal against a certain conviction [*or order*] bearing date the day of instant, and made by *J. S.* and *J. L.*, Esquires, two of her Majesty's justices, &c., whereby he the said *A. B.* was convicted, for that he the said *A. B.*, on the day of at the parish of , in the said [*county*] of , unlawfully did [*here set out the offence as stated in the conviction or order*] and adjudged to pay, &c. [*as in the notice No. 52, supra*]; and further, that if the said *A. B.* shall abide by and duly perform the order of the court to be made upon the trial of such appeal, then the said recognizance to be void, or else to remain in full force and virtue.

Take notice that you, *A. B.*, are bound in the sum of pounds, and you, *L. M.* [*and N. O.*], in the sum of [each], that you the said *A. B.* personally appear at the next general [*or quarter*] sessions of the peace to be holden at in and for the said [*county*] of , and there enter and prosecute an appeal against a conviction [*or order*] dated the day of instant, whereby you, *A. B.*, were convicted of [*stating offence or order shortly*], and abide by and perform the order of the court to be made upon the trial of such appeal; and unless you, *A. B.*, appear and prosecute such appeal accordingly, the recognizance entered into by you and your sureties before me this day will forthwith be levied on you and them.

(54) Notice of such recognizance.

Dated this day of , 187 .

J. S.

Justice of the peace for the said [*county*].

35 & 36 Vict.
c. 94.

(35) Temporary licence granted by convicting justices pending appeal against forfeiture of licence (35 & 36 Vict. c. 94, s. 23; 37 & 38 Vict. c. 49, s. 15).

At a petty sessions of her Majesty's justices of the peace for the division of in the [county] of held at on the day of , 187 .

Whereas the licence of one *A. B.*, of &c. [*describing him*], for the sale by retail of [*as in the licence*] has become forfeited on [*or in pursuance of*] the conviction of the said *A. B.* for the offence of under section of the Licensing Act, 1872 (*or* 1874), made by us the undersigned, two of the justices assembled at the said petty sessions; and an appeal has been duly made against the said conviction: Now we the said justices hereby grant unto the said *A. B.* [*or unto C. D.* on behalf of the said *A. B.*, pursuant to the provisions of the fifteenth section of the Licensing Act, 1874] this temporary licence authorizing him to apply for and hold an excise licence to sell, &c. [*as in the original licence*], to be in force for the period of months from this day, upon the following conditions, viz. :—

[*Setting out the conditions.*]

Given under our hands and seals at the petty sessions aforesaid.

[*Justices' signatures and seals.*]

CHAPTER XIII.

PROTECTION OF OWNERS OF LICENSED PREMISES.

35 & 36 Vict.
c. 94.

For the protection of owners of licensed premises in cases of offences committed by their tenants, the 35 & 36 Vict. c. 94, s. 56, enacts,—“Where any tenant of any licensed premises is convicted of an offence against this act, and such offence is one the repetition of which may render the premises liable to be disqualified from receiving a licence for any period (*a*), it shall be the duty of the clerk of the licensing justices to serve, in manner provided by this act, notice of every such conviction on the owner of the premises (*b*).

Clerk to justices to give notice to owner of convictions likely to disqualify premises.
Sect. 56.

Where any order of a court of summary jurisdiction declaring any licensed premises to be disqualified from receiving a licence for any period has been made (*c*), the court shall cause such order to be served on the owner of such premises, where the owner is not the occupier, with the addition of a statement that the court will hold a petty sessions at a time and place therein specified, at which the owner may appear and appeal against such order on all or any of the following grounds, but on no other grounds (*d*):

Service of order on owner disqualifying premises.

Appeal against order on specified grounds.

- (*a*.) That notice, as required by this act, has not been served on the owner of a prior offence which on repetition renders the premises liable to be disqualified from receiving a licence at any period;—or
- (*b*.) That the tenant by whom the offence was committed held under a contract made prior to the commencement of this act, and that the owner could not legally have evicted the tenant in the interval between the commission

35 & 36 Vict.
c. 94.

Sect. 56.

of the offence, in respect of which the disqualifying order was made, and the receipt by him of the notice of the immediately preceding offence which on repetition renders the premises liable to be disqualified from receiving a licence at any period ;—or

- (c.) That the offence in respect of which the disqualifying order was made occurred so soon after the receipt of such last-mentioned notice that the owner, notwithstanding he had legal power to evict the tenant, could not with reasonable diligence have exercised that power in the interval which occurred between the said notice and the second offence.

Justices may
cancel the
order dis-
qualifying
premises.

If the owner appear at the time and place specified, and at such sessions, or any adjournment thereof, satisfy the court that he is entitled to have the order cancelled on any of the grounds aforesaid, the court shall thereupon direct such order to be cancelled, and the same shall be void (e).

The remainder of this section as to rules being made by the justices with respect to notice to mortgagees of premises is repealed by 37 & 38 Vict. c. 49, s. 33.

(a) The premises may be disqualified for two years when the licensed person, having already two convictions recorded on the licence, is convicted of an offence by the Act of 1872 directed to be recorded on the licence, 35 & 36 Vict. c. 94, s. 30, *ante*, p. 189. See the list of offences in Chap. X., note (a) *ante*, p. 89.

(b) The name of the owner is obtained under sect. 36, *ante*, p. 129, and probably stated in the application for a new licence; but see 37 & 38 Vict. c. 49, s. 29, *ante*, p. 26. *Vide* form of notice of a conviction, No. 40, *ante*, p. 198. The notice is served in manner pointed out in sect. 70, *ante*, p. 37.

Implied Covenant—Public-house—Forfeiture of Licence by Misconduct of Tenant.—Upon the letting by parol of a public-house there is no implied covenant or agreement, that the tenant shall do no act whereby the licence shall become forfeited.

A. took by parol a licensed public-house of B., but having been three times convicted of offences connected with the management of such house the magistrates refused to renew the licence. Upon an action by B. upon the implied covenant not to suffer the premises to be used in a manner calculated to produce a forfeiture of the licence:—Held, that no such covenant could be implied, and that the action could not be maintained (*Maw v. Hindmarsh*, 28 L. T., N. S. 644).

25 & 26 Vict.
c. 94.

Covenant—Construction—Public-house.—Upon a purchase of land, the purchaser covenanted with the vendors not to carry on upon the property certain offensive trades or any business which was or might be deemed a public or private nuisance, nor to use any building which should be erected thereon, as a public-house for the sale of beer, wine, malt liquors, or spirits:—Held, that the sale of beer by retail, under a licence “not to be drunk on the premises,” was no breach of the covenant (*Pease v. Coats*, L. R., 2 Eq. 688; *London and North Western Rail. v. Garnett* (covenant not to use as “beerhouse”), L. R., 9 Eq. 26).

Covenant—Notice of Covenants in original Deed of Grant—Sale of Spirituous Liquors.—Covenant in original conveyance not to use, &c. the building “as an inn, public-house, or tap-room, or for the sale of spirituous liquors, or ale, or beer.” A lease of the same premises contained a covenant that “no offensive business or occupation or nuisance shall be carried on or committed on said premises, and that the same shall be used as dwelling-house and shop only.” Defendant (lessee) as grocer sold wine and spirits in bottle, without knowledge of original covenant:—Held, that he was fixed with notice of the covenant—that “for the sale of spirituous liquors” did not prevent sale of wine, but extended to sale of spirituous liquors in bottle—injunction granted (*Feilden v. Slater*, L. R., 7 Eq. 523).

Covenant by purchaser of land, not naming his assigns, that no building erected on the land shall be used as a beer-shop, does not run with the land (*Wilson v. Hart*, L. R., 1 Ch. Ap. 463).

(c) We have recommended, note (c), *ante*, p. 191, that an order should be made even in those cases where the disqualification follows by force of the statute upon conviction. This second paragraph will, and is evidently intended to, apply to *all* disqualifications, and therefore, a copy of the order should be sent to the owner. *Vide* form of notice, No. 40, *ante*, p. 199, which is also adapted to the requirement of this paragraph of this section 56, as to the petty session at which the owner may appeal against a disqualifying order. The service of the order is provided for by sect. 70, *ante*, p. 37.

(d) The owner is not required to give notice of the grounds in writing, or to state them in any way before he makes his appeal at the petty sessions; but it would be advisable to do so in order to avoid delay; and in that case he should communicate with the clerk to the convicting justices.

35 & 36 Vict.
c. 94.

(e) *Vide* form of order cancelling the order disqualifying premises, No. 56, *post*, p. 229. Should the justices refuse to cancel the disqualifying order there is no appeal to any other court; of course not under sect. 52, *ante*, p. 218, as that is against an order *made*.

As to the temporary continuance of licences forfeited for single offences, see 37 & 38 Vict. c. 49, s. 15, *ante*, p. 191.

Removal of
licences from
one part of a
district to
another.
Sect. 50.

Under sect. 50, *ante*, p. 91, containing provisions for removing a licence from one part of a licensing district to another, &c., there is a provision requiring the owner of the premises from which the licence is to be removed, to be served with copy of the notice of the application for removal. It will apply also to a provisional removal of an existing licence under sect. 22 of 37 & 38 Vict. c. 49.

Covenants
against
houses, &c.
being used as
public-houses
to extend to
beerhouses.
1 Will. 4, c.
64, s. 31.

As to private houses being used as public-houses contrary to covenants in leases, &c., the Beerhouse Act, 1 Will. 4, c. 64, s. 31, enacts,—"That any and every covenant or clause of restriction contained in any lease or contract between any landlord and tenant, whereby the trade or business of a victualler or publican is prohibited from being carried on in any house, building or place mentioned or comprised in such lease or contract, *or* whereby any such house, building or place is prohibited from being used as a public-house or ale-house, shall apply and extend, and shall be construed to apply and extend, to every person who shall be licensed to sell beer, ale or porter, or cider or perry, under the provisions of this act, and to any and every house specified and mentioned in the licence granted to such persons.

Nor to houses
licensed to
sell wine to
be consumed
on the pre-
mises.
23 Vict. c. 27,
s. 44.

The Refreshment Houses Act, 23 Vict. c. 27, s. 44, enacts,—“That any covenant or clause of restriction contained in any lease or contract between a landlord and tenant, whereby the trade or business of a vintner (a) is prohibited from being carried on in any house, build-

ing or place mentioned or comprised in such lease or contract, or whereby any such house, building or place is prohibited from being used as a public-house, shall be construed to apply and extend to every person who shall be licensed to sell wine to be consumed on the premises under the provisions of this act, and to any house specified in the licence granted to such person.

28 Vict. c. 27,
s. 44.

(a) The term "vintner" means one who sells wine generally, and is not restricted to one who sells wine to be consumed on the premises (*Wells v. Attenborough*, 24 L. J., N. S. 312, Ch.)

FORM.

At a petty sessions of her Majesty's justices of the peace for the division of in the [county] of held at on the day of 187 :

(56) Order
cancelling
order dis-
qualifying
premises (35
& 36 Vict. c.
94, s. 56).*

Whereas by the order of *J. S.* and *J. L.*, esquires, two of her Majesty's justices of the peace assembled at a petty sessions held in and for the said division on the day of last, it was duly ordered and declared, pursuant to section of the Licensing Act, 1872, that the premises of *A. B.*, situate at in respect of which a licence for the sale by retail of [as in the licence] was then held by him, should be disqualified from receiving any licence for the sale of any intoxicating liquor for the term of : And whereas *L. M.* of, &c., being registered as owner of the said premises, has been duly served with the said order, and now appears and appeals against the same to us the undersigned, two of the justices assembled at the petty sessions first above mentioned : Now we the said justices, being satisfied upon due proof upon oath as otherwise and upon due consideration of the matter in this behalf, that the said *J. M.* is entitled to have the said order cancelled on some one or more of the grounds set forth in section 56 of the aforesaid act, do hereby direct the said order to be cancelled.

Given under our hands and seals at the petty sessions first above mentioned.

[Justices' signatures and seals.]

N.B.—If the notice, No. 43, *ante*, p. 199, has been given to the officer of inland revenue and the clerk of the licensing justices of the order disqualifying the premises, a short notice should be sent of the cancellation of it to the same parties.

* See form of order disqualifying premises, *ante*, p. 198.

CHAPTER XIV.

AS TO REFRESHMENT-HOUSES IN WHICH INTOXICATING LIQUORS NOT SOLD.

Preliminary
observations.
Definition of
"refresh-
ment-house."

THE definition of a "refreshment-house" is contained in 23 Vict. c. 27, s. 6, *ante*, pp. 71, 72, as amended by 24 & 25 Vict. c. 91, s. 8, which applies to coffee-shops, night-houses, and the like.

Provisions of
23 Vict. c. 27,
and 27 & 28
Vict. c. 64,
and 28 & 29
Vict. c. 77,
excepted
from repeal
in 35 & 36
Vict. c. 94.

Many of the provisions of the Refreshment Houses Act, 23 Vict. c. 27, and of the Public House Closing Acts, 1864 and 1865 (27 & 28 Vict. c. 64, and 28 & 29 Vict. c. 77), in regard to these refreshment-houses, are excepted by the Licensing Act, 1872, 35 & 36 Vict. c. 94, from the repeal by sect. 75 of the acts in the second schedule, *ante*, p. 20.

- (1) *The Unrepealed Provisions of the Refreshment Houses Act*, *infra*.
- (2) *The Unrepealed Provisions of the Public House Closing Acts*, 1864, 1865, p. 241.

(1) *The Unrepealed Provisions of the Refreshment Houses Act.*

23 Vict. c. 27,
ss. 18, 30—38,
41, 43, un-
repealed.

The sections of the 23 Vict. c. 27, repealed by the 35 & 36 Vict. c. 94, but only "so far as such sections relate to the sale of intoxicating liquors, or any offences connected therewith," are—18, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41 and 42, which we give entire in proper order.

Offences.

28 Vict. c. 27.

Sect. 18. "It shall be lawful for all constables and officers of police, when and so often as they shall respectively think proper, to enter into all houses licensed as refreshment-houses under the authority of this act, and into and upon the premises belonging thereto;—and if any person licensed to keep a refreshment-house, or any servant or other person in his employ or by his direction, shall refuse to admit *or* shall not admit any constable or officer of police demanding admittance into such refreshment-house or upon such premises, the person so licensed shall for the first offence forfeit and pay any sum not exceeding five pounds, together with the costs of conviction, to be recovered before one or more justices of the peace, on information or complaint made within seven days next after the day on which such offence was committed;—and it shall be lawful for any two or more justices before whom any such person shall be convicted for the second time of any such offence to adjudge (if they shall so think fit) the licence or licences of such offender in respect of such refreshment-house to be forfeited, and that he shall be disqualified from having any licence granted to him under this act in respect of such house for the space of two years, or for such shorter space of time as they may think proper to adjudge."

Constables and police officers empowered to visit licensed refreshment-houses.

Ib. s. 18.

Penalty for refusing them admittance.

Ib.

Licence to be forfeited on second conviction, if justices think fit.

Ib.

Sect. 31. "It shall be lawful for the justices before whom any person holding a licence under this act for the sale of wine by retail shall be convicted of any offence against the tenor of the said licence, *or* for which any penalty is imposed by this act, if proof shall be adduced to their satisfaction that within two years last preceding such conviction two convictions for any such offence of the same person, *or* of any other person licensed in respect of the same house or premises, have taken place, to declare the licence granted in respect of the said house or premises forfeited and void, and to adjudge that no licence for the sale of wine shall be granted to any person whatever in respect of the said house or premises for the term of three years from the date of such adjudication, of which adjudication the justices shall give notice to the supervisor of excise;—and any licence for the sale of wine that may be granted in respect of the said house or premises during the said term of three years shall be null and void."

Justices may adjudge premises disqualified for sale of wine on proof that within two years last preceding such third conviction, two convictions have taken place.

Ib. s. 31.

(See also sect. 30, *post*, p. 233, as to offences against tenor of licence.)

23 Vict. c. 27.

Selling liquor,
suffering
gaming, or
bad cha-
racters to be
in house, &c.

Ib. s. 32.

Penalties.

Ib.

Witnesses re-
fusing to at-
tend or to
give evi-
dence.

Ib. s. 28.

Penalty.

Drunken and
disorderly
persons re-
fusing to quit
licensed
houses on re-
quest.

Ib. s. 41.

Penalty.

Ib.

Sect. 32. "Every person licensed to keep a refreshment-house under this act who shall (without a licence for that purpose) sell *or* permit *or* suffer to be sold within such refreshment-house any intoxicating liquor,—*or* shall knowingly suffer any unlawful games *or* gaming therein,—*or* knowingly suffer prostitutes, thieves, or drunken and disorderly persons to assemble at *or* continue in *or* upon his premises,—*or* do, suffer, *or* permit any act in contravention of his licence [*see* sect. 30],—shall, upon conviction thereof before two justices, pay for the first offence a fine not exceeding forty shillings,—for the second offence a fine not exceeding five pounds,—and for every subsequent offence a fine not exceeding twenty pounds, *or* be subject to a forfeiture of his licence, at the discretion of the justices before whom he shall be convicted;—and in case of such forfeiture of his licence, such person shall be disqualified for the space of one year then next ensuing from obtaining a fresh licence;—and such fresh licence, if obtained within the said year, shall be absolutely null and void to all intents and purposes."

Sect. 38. "Any person summoned as a witness to give evidence . . . touching any matters arising under this act, either on the part of the complainant *or* of the person accused, *or* of any person interested in any such matter, who shall neglect *or* refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect *or* refusal as shall be admitted and allowed by justices,—*or* who appearing shall refuse to be examined on oath *or* affirmation and give evidence,—shall, on conviction, forfeit and pay any sum not exceeding ten pounds for every such offence."

Sect. 41. "Any person who shall be drunk, riotous, quarrelsome, *or* disorderly in any shop, house, premises, *or* place licensed [for the sale of beer, wine, or spirituous liquors by retail to be consumed on the premises, *or* (a)] for refreshment, resort, and entertainment under the provisions of this act, and shall refuse *or* neglect to quit such shop, house, premises, *or* place, upon being requested so to do by the manager *or* occupier, *or* his agent *or* servant, *or* by any constable, shall, on conviction thereof before one justice, be liable to pay a fine not exceeding forty shillings;—and all constables are hereby authorized, em-

(a) The portion within brackets [] is repealed.

powered, and required, on the demand of such manager, occupier, agent, or servant, to assist in expelling such drunken, riotous, quarrelsome, and disorderly persons from such shops, houses, premises, and places."

23 Vict. c. 27.

Constables to assist in expelling them, if required.

Recovery of Penalties.

Sect. 30. "All penalties under this act, except those denominated excise penalties, shall be recovered upon the information or complaint of a constable or other peace officer before two justices acting in petty sessions,—and shall be prosecuted and proceeded for within three calendar months next after the commission of the offence in respect of which such penalty shall be incurred, *or* within such shorter time as may be herein limited with regard to any particular penalty (a);—and every person licensed under this act *to retail wine*, to be consumed on the premises (b), who shall be convicted before two justices so acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person, of any offence against the tenor of the licence to him granted under this act (c), *or* of any offence for which any penalty is imposed by this act, shall, unless proof be adduced to the satisfaction of such justices that such person had been theretofore convicted within the space of twelve calendar months next preceding of some offence against the tenor of his licence *or* against this act, be adjudged to be guilty of a first offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, *or* if no specific penalty be so imposed then any sum not exceeding five pounds, together with the costs of the conviction;—and if such proof as aforesaid shall be adduced that such person had been previously convicted within the space of twelve calendar months next preceding of one such offence only, such person shall be adjudged to be guilty of a second offence against the provisions of this act, and to forfeit and pay and penalty by this act imposed for such offence, *or* if no specific penalty be so imposed then any sum not exceeding ten pounds, together with the costs of the conviction;—and if such proof as aforesaid shall be adduced that such person had been previously convicted within the space of eighteen calendar months next preceding of two such separate offences, and if proof shall be adduced to the satisfaction of the justices that such person so charged is guilty of the offence charged against him, such person shall be adjudged

Penalties other than excise penalties recoverable before two justices in petty sessions, within three months after offence committed.

Ib. s. 30.

First offence.

Ib.

Second offence.

Ib.

23 Vict. c. 27.

Third offence.

Ib. s. 30.

to be guilty of a third offence against the provisions of this act, and to forfeit any penalty imposed by this act in respect of such offence, *or* if no such specific penalty shall be so imposed then to forfeit and pay the sum of fifty pounds, together with the costs of the conviction."

(a) Seven days under sect. 18, *ante*, p. 231.

(b) This portion of the section seems now inoperative, notwithstanding the whole section is saved in the repeal, *ante*, p. 230.

(c) In the form of licence in Schedule 1 to the act there are these conditions: "do not wilfully *or* knowingly permit any drunkenness, *or* any violent *or* quarrelsome *or* other disorderly conduct in his house *or* premises,—*nor* knowingly suffer any unlawful games *or* any gaming whatsoever therein,—*nor* knowingly suffer *or* permit persons of known bad character to assemble and meet together therein, but do maintain good order and rule therein." *Vide* cases in note, *ante*, pp. 163, 165.

Provisions of
11 & 12 Vict.
c. 43, to be
applied in
the recovery
of penalties
under this
act.

Ib. s. 42.

Sect. 42. "And with regard to all penalties incurred under this act, except the penalties herein denominated excise penalties, all the provisions contained in the act passed in the eleventh and twelfth years of her Majesty, chapter forty-three, relating to proceedings for the recovery of penalties by summary conviction, and to appeals against such convictions, and the levying and enforcing of penalties, and the costs of such proceedings, shall be applied and put in force in relation to the penalties by this act imposed."

See an abstract of the provisions of 11 & 12 Vict. c. 43, *ante*, pp. 215—217 (Chap. XII.).

Sect. 37, relating to justices summoning witnesses and ordering costs on hearing objections to grant of licences for sale of wine, &c., seems now to be inoperative, although, in error, this section with others is saved in the repeal by 35 & 36 Vict. c. 94, s. 75, *ante*, p. 20, as regards wine houses not selling intoxicating liquors.

Power to
justices to
mitigate
penalties.
Ib. s. 33.

Sect. 38. "It shall be lawful for the justices before whom any person shall be convicted of any offence against this act to mitigate, if they shall see cause, any penalty incurred for such offence;—provided, that where any conviction shall take place on any information exhibited under the laws of excise such penalty shall not be mitigated to any sum less than one fourth part thereof."

Appeal against Convictions.

Appeal to the
sessions
against a

Sect. 34. "Provided always, that it shall be lawful for the party convicted of any such second or third offence to appeal to

the general or quarter sessions of the peace then next ensuing, unless such sessions shall be held within twelve days next after such conviction, and in that case to the then next subsequent sessions;—and in such case the party so convicted shall, before the convicting justices, forthwith enter into a recognizance, with two sufficient sureties, personally to appear at such general or quarter sessions, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded, which recognizances such justices are hereby authorized to require and take, or, in failure of the party convicted entering into such recognizance, the conviction shall remain good and valid to all intents and purposes;—and the said justices who shall take such recognizance from the party convicted are also hereby required to bind the person who shall make such charge in a recognizance to appear at such general or quarter sessions as aforesaid, then and there to give evidence against the person so charged, and in like manner to bind any other person who shall have any knowledge of the circumstances of such offence;—and it shall be lawful for such court of general or quarter sessions to adjudge such person to be guilty of any such second or third offence against the provisions of this act, as the case may be, and such adjudication shall be final to all intents and purposes;—and it shall be lawful for such court of general or quarter sessions to punish such offender by fine not exceeding the sum of one hundred pounds, together with the costs of such appeal, or to adjudge the licence granted to and held by or on behalf of such offender to be forfeited and void, or to adjudge that no wine shall be sold by retail in the house or premises mentioned in the licence of such offender for the term of two years from the date of such adjudication, or to punish such offender by such fine as aforesaid, and to adjudge such premises to be disqualified for the sale of wine as aforesaid, and such licence to be forfeited and void, and if such licence shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly;—and whenever in such case or in any other case the licence of such offender shall be adjudged to be void, such offender shall from and after such adjudication be deemed and taken to be incapable of selling wine by retail in any house kept by him for the space of two years, to be computed from the time of such adjudication, and any licence granted to such person during such term shall be void to all intents and purposes.”

Sect. 35. “Whenever it shall happen that an appeal in pur-

23 Vict. c. 27.

second or third conviction;

Ib. s. 34.

—recognizance of appellant and witnesses;

Ib.

—quarter sessions to adjudge offenders to pay, &c.;

Ib.

—when licence adjudged void.

Ib.

Court to adjudge costs of

23 Vict. c. 27.
appeal in
certain cases;
Ib. s. 35.

—neglecting
to pay the
costs;
Ib.

—where con-
viction re-
versed;
Ib.

—treasurer to
pay costs to
justices.
Ib.

Proceedings
on appeal to
be carried on
by the con-
stable, and
the expenses
of prosecu-
tion to be
charged on
county
rates.

Ib. s. 36.

suance of this act shall be dismissed, *or* that the judgment appealed against shall be affirmed, *or* that such appeal shall be abandoned, it shall be lawful for the court to which such appeal shall have been made or intended to have been made, and such court is hereby required to adjudge and order that the party so having appealed, *or* having entered into such recognizance, shall pay to the justices against whose judgment such appeal shall have been made or intended to be made, or to whomsoever they shall appoint, such sum by way of costs as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been put in consequence of the intention or declared intention of such party to appeal;—and if such party shall refuse or neglect to pay forthwith such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid, or for any time not exceeding six calendar months, unless such sum be sooner paid;—and in every case in which the judgment so appealed against shall be reversed it shall be lawful for such court (if it shall think fit) to adjudge and order that the treasurer of the county or place in and for which such justices whose judgment shall have been so reversed shall have acted on the occasion when they shall have given such judgment, shall pay to such justices, or to whomsoever they shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which they may have been so put;—and the said treasurer is hereby authorized to pay the same, which shall be allowed to him in his accounts.”

Sect. 36. “In every case in which any appeal shall be made by any person convicted of any offence under the provisions of this act to the general or quarter sessions, it shall be lawful for the convicting justices, if no other fit and proper person shall appear to prosecute such charge, and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that a constable of the City of London police force within the City of London and liberties thereof, *or* a constable of the metropolitan police force within the metropolitan police district, *or* if elsewhere the superintendent or inspector of police of the district, *or* the constable or other police officer of the parish or place in which the house kept by the person charged

shall be situate, as to the said justices shall seem fit, shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind any such constable, *or* the said superintendent *or* inspector of police, *or* other police officer, in a sufficient recognizance so to do;—and it shall be lawful for the justices, before whom such offender shall have been convicted, to order the treasurer of the county or place in and for which such justices shall then act to pay to such constable, superintendent, inspector, *or* other peace officer, and to the witnesses on his behalf, such sum or sums of money as to the court shall appear to be sufficient to reimburse them respectively the expenses which they shall have been severally put to in and about such prosecution, which order the clerk of the peace is hereby directed and required forthwith to make out, and to deliver to such constable, superintendent, inspector, *or* other peace officer and witnesses respectively;—and the said treasurer is hereby authorized and required, upon sight of such order, forthwith to pay to the person authorized to receive the same such money as aforesaid, and the said treasurer shall be allowed the same in his accounts.”

23 Vict. c. 27.

Sect. 63.

Treasurer to pay costs of witnesses.

Ib.

Section 26 of 35 & 36 Vict. c. 94, *ante*, pp. 144, 145, which authorizes the local authority to grant exemption from closing hours in the neighbourhood of markets, theatres, &c., seem to apply also to licensed refreshment-houses having the excise, but not the justices' licence, as they do not sell intoxicating liquor, viz., to night-houses open between 10 P.M. and 5 A.M., coffee-shops, confectioners, and eating-house keepers. (See note to 28 & 29 Vict. c. 77, s. 2, *post*, p. 242.)

Section 26 of 35 & 36 Vict. c. 94, is applicable to these houses.

(2) *The Unrepealed Provisions of the Public House Closing Acts, 1864, 1865.*

The whole of each of the acts 27 & 28 Vict. c. 64 and 28 & 29 Vict. c. 77, is repealed by the 35 & 36 Vict. c. 94, “except in so far as it relates to refreshment-houses in which intoxicating liquors are not sold.” These acts may be arranged as follows:—

27 & 28 Vict. c. 64; 28 & 29 Vict. c. 77, unrepealed.

Limits and Adoption of Acts.

The first act is “The Public House Closing Act, 1864,” amended by “The Public House Closing Act, 1865,” which are

to be read together as one act (28 & 29 Vict. c. 77, s. 6). With regard to the limits of the acts, they are in force in the metropolis, and in such corporate boroughs and districts as adopt them, the provisions as to which are as follow :—

Adoption of
acts.
27 & 28 Vict.
c. 64, s. 2.

Id. s. 9.

By 27 & 28 Vict. c. 64, s. 2, "This act shall be in force only within the limits of the metropolitan police district, the City of London and the liberties thereof, and such corporate boroughs and districts of improvement commissioners (a), as adopt the same in pursuance of the powers hereinafter given." By sect. 9, "A corporate borough or board of improvement commissioners may adopt this act by a resolution of the council or board assembled at a meeting held for the purpose, of which such notice has been given and which is required to be summoned on such requisition of the ratepayers as is required in the case of the adoption of the said Local Government Act, 1858, by a corporate borough, or in a district of improvement commissioners, to which the Local Government Act has not been applied, in pursuance of sections twelve and thirteen of the said Local Government Act, and notice of the adoption of this act shall be given to the secretary of state as in the case of the adoption of the said Local Government Act. This act shall come into operation in a corporate borough or district of improvement commissioners in which a resolution adopting the same has been passed at the expiration of one month from the date of the passing of the resolution ;—and no objection whatever to the legality of the adoption of this act by any corporate borough or board of improvement commissioners shall be made at any trial or in any legal proceeding after the expiration of three months from the date of the passing of the resolution adopting the same."

Amended by
28 & 29 Vict.
c. 77, s. 4.

By 28 & 29 Vict. c. 77, s. 4, "The said act, as herein amended, shall be in force in such districts under the operation of the

27 & 28 Vict.
c. 64, s. 3.

(a) *Definition of "Corporate Borough," &c.*] By sect. 3, "Corporate borough" shall mean any place for the time being subject to the Municipal Corporations Acts, 5 & 6 Will. 4, c. 76; "district of improvement commissioners" shall mean any place within the jurisdiction of a board of improvement commissioners as defined for the purposes of the twelfth section of the Local Government Act, 1858, (i. e., where all or part of the commissioners are elected by ratepayers or by owners and ratepayers); and "board of improvement commissioners" shall mean such commissioners as last aforesaid.

(2) *Provisions of Public House Closing Acts.*

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Public Health Act, 1848, or the Local Government Act, 1858, as adopt the same; and local boards of health established under or by virtue of the said Public Health Act, 1848, and local boards established under or by virtue of the said Local Government Act, 1858, may adopt the said Public House Closing Act, 1864, in the same manner;—and the same shall come into operation at the same time as is provided for the adoption and coming into operation of that act by corporate boroughs, or boards of improvement commissioners;—provided that this section shall not apply to any district which is a corporate borough, or within the jurisdiction of a board of improvement commissioners.”

28 & 29 Vict.
c. 77, s. 4.

Adoption of
acts.

Hours of Closing of Refreshment Houses.

By 27 & 28 Vict. c. 64, s. 5 [save as hereinafter mentioned, no licensed victualler (a) within the limits of this act shall sell or expose for sale or open or keep open any house, room, garden, or other place for the sale or consumption of exciseable liquors or any article whatsoever between the hours of one and four o'clock in the morning].

As to the
closing of
refreshment-
houses.

27 & 28 Vict.
c. 64, s. 5.

“No person within the limits of this act shall open or keep open any refreshment-house (b), or sell or expose for sale or consumption in any refreshment-house any refreshments or any article whatsoever between the above-mentioned hours, *i. e.*, ‘between [one] and four in the morning.’”

Now, however, the 27 & 28 Vict. c. 64, so far as it is unrepealed, shall be construed as if there were substituted therein for the hour of one o'clock in the morning the hour of the night or morning at which premises licensed for the sale of intoxicating liquors by retail situate in the same place as such refreshment-house are required to be closed, and as if the whole of England were within the limits of the act, and as if

Hours of
closing night
houses.

37 & 38 Vict.
c. 49, s. 11.

(a) This is repealed as regards licensed victuallers by the 35 & 36 Vict. c. 94. The parts in brackets in the enactment of sect. 6 as to free vintners would be inoperative likewise.

(b) 27 & 28 Vict. c. 64, s. 4, provides that “refreshment-house” in this act shall have the same meaning as it has in the 23 Vict. c. 27. See sect. 6, *ante*, pp. 71, 72.

the expression "district" in the act included any place in which such refreshment-house is situate.

27 & 28 Vict.
c. 64, s. 5.

"Any person acting in contravention [thereto] shall be liable to a penalty not exceeding five pounds, to be recovered in a summary manner as provided by the act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three (b).

"Nothing herein contained shall preclude [a licensed victualler from selling exciseable liquors to or allowing the same to be consumed by persons lodging in his house, *or (c)*] the keeper of a refreshment-house from selling refreshments to *or* allowing the same to be consumed by persons lodging in his house, within the above-mentioned hours.

"Nothing herein contained shall [authorize a licensed victualler to sell exciseable liquors on any Sunday, Christmas Day, Good Friday, or day appointed for public fast or thanksgiving, otherwise than during the times at which he is now authorized by law to sell the same, *or*] authorize any other person to sell exciseable liquors (d), keep open any refreshment-house, *or* sell refreshments otherwise than at the times and upon the conditions prescribed by the acts of parliament in that behalf made." (See Chap. VIII., *ante*, p. 133.)

Application
of act to free
vintners.
Ib. s. 6.

[6. This act shall apply to a freeman of the company of the master, wardens, and commonalty of vintners of the City of London in the same manner as if he were a licensed victualler (e).]

Not to apply
to sales at
railway
stations be-
tween one
and four in
the morning.
Ib. s. 10.

Sect. 10. "Nothing herein contained shall apply to the sale at a railway station between the hours of one and four o'clock in the morning of exciseable liquors or refreshments to persons arriving at or departing from such station by railroad."

As to railway travellers, see *ante*, p. 139.

(b) *Vide* the 11 & 12 Vict. c. 43, abstracted under 35 & 36 Vict. c. 94, s. 51, in Chap. XII., *ante*, pp. 215—217.

(c) See note (a), *ante*, p. 239.

(d) "*Exciseable liquor*" is defined by 27 & 28 Vict. c. 64, s. 4, to "mean any spirits, foreign wine, beer, cider, sweets, or made wines, as defined by the acts relating to the excise." See *post*, p. 259, its definition under 8 & 9 Vict. c. 109, as to billiard licences.

(e) See note (a), *ante*, p. 239.

*Grant of Occasional Licence.*27 & 28 Vict.
c. 64, s. 7.Grant of
occasional
licence.

By 27 & 28 Vict. c. 64, s. 7, "If any [licensed victualler *or* (*e*)] keeper of a refreshment-house as aforesaid within the limits of this act applies to the local authority hereinafter mentioned for a licence exempting him from the provisions of this act on any special occasion or occasions, it shall be lawful for the local authority, if in its discretion it thinks fit so to do, to grant to the applicant an occasional licence exempting him from the provisions of this act during certain hours and on a special occasion or occasions to be specified in the licence;—and no [licensed victualler *or* (*e*)] keeper of a refreshment-house to whom an occasional licence has been granted under this act shall be subject to any penalty for a contravention of this act during the time to which his occasional licence extends, but he shall not be exempted by such occasional licence from any penalty to which he may be subject under any other act of parliament."

By sect. 8, "the following persons and bodies of persons shall be deemed to be local authorities capable of granting occasional licences for the purposes of this act; that is to say,

The local
authority.
Ib. s. 8.

- (1.) In the metropolitan police district, the commissioner of police for the metropolis, subject to the approbation of one of her Majesty's principal secretaries of state:
- (2.) In the City of London and the liberties thereof, the commissioner of the city police, subject to the approbation of the lord mayor of the said city:
- (3.) In any borough in which this act may be in force, the superintendent or other chief officer of police in the said borough, subject to the approbation of the mayor:
- (4.) In any district of improvement commissioners in which this act may be in force, the superintendent or other chief officer of police in the said district, subject to the approbation of the chairman of the commissioners."

This section was amended by 28 & 29 Vict. c. 77, s. 5, which provides that "so much of the eighth clause of the said recited act as defines the local authority to be a commissioner, superintendent, or other chief officer of police shall be repealed, and instead thereof, the local authority shall be, in any district, city or town where petty sessions are held, except in the metropolitan

Amended by
28 & 29 Vict.
c. 77, s. 5.

(*e*) See note (*a*), *ante*, p. 239.

28 & 29 Vict.
c. 77, s. 5.

police district [the City of London is not included in this description, and the justices there have hitherto granted the exemption as they can continue to do], two justices of the peace sitting in petty sessions, and in any other district, city, or town, two justices of the peace acting in the district, city or town."

See form of the licence, No. 57, *post*, p. 243.

This licence, granted under 27 & 28 Vict. c. 64, s. 7, as well as that in 28 & 29 Vict. c. 77, s. 2, is cumulative upon those occasional licences granted by the excise, under the 25 & 26 Vict. c. 22, s. 13, and 27 & 28 Vict. c. 18, s. 5, given in Chap. XVII., *post* (*Hannant v. Foulger*, 36 L. J. (N. S.) M. C. 119); but now see 37 & 38 Vict. c. 49, s. 11, *ante*, p. 239. See at the commencement of Chap. XVII. for a summary of the law as to *all* these licences and how they are obtained.

Licence exempting Holder from Closing Hours.

Power to justices to grant licences to licensed victuallers and refreshment-house keepers suspending operation of recited act.

28 & 29 Vict. c. 77, s. 2: "*It shall be lawful for the licensing justices at the time of granting or renewing any licence,** upon the production of such evidence as they shall deem sufficient to show that it is necessary or desirable, for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, if, in the discretion of such justices, they shall think fit, to grant to any [licensed victualler or] keeper of a refreshment-house whose place of business is in the immediate neighbourhood of such market, or of the place where the persons follow such lawful trade or calling, a licence exempting him from the provisions of the hereinbefore-mentioned act between the hours of two and four o'clock in the morning, or any part of such hours, during such days, times, or hours, as shall be specified in such licence;—and no [licensed victualler or] keeper of a refreshment-house to whom such licence has been granted under this act shall be subject to any penalty for a contravention of the hereinbefore-mentioned act during the days or times to which such licence extends, but he shall not be exempted by such licence from any penalty to which he may be subject under any other act of parliament;—provided that a printed

* Justices at the time of the passing of this act of 28 & 29 Vict. c. 77, did not *grant* or *renew* licences for refreshment-houses but only objected to the *grant* or *renewal* by the excise of such licences *where wine was sold* (see 23 Vict. c. 27, ss. 1, 7, 13, 14, 15). It must mean now at the general annual licensing meeting or adjournment, or transfer special sessions.

notice stating the days and special hours during which and the class of persons for whom the house is open under such licence shall be affixed 'in a conspicuous position outside the house.' By sect. 3, "it shall be lawful for such justices, from time to time, as and when it may seem fit to them, either to withdraw such licence altogether, *or* to alter, vary, *or* amend the same in such manner as such justices may deem necessary or expedient."

28 & 29 Vict.
c. 77, s. 2.

Power to
withdraw
such licence.
Sect. 3.

The sect. 2 might have been repealed *in toto*, as the 35 & 36 Vict. c. 94, s. 26, *ante*, pp. 144, 145, applies to the same occasions, and to all refreshment-houses, whether licensed for the sale of intoxicating liquor or not. The enactments seem to be cumulative in respect to houses where intoxicating liquor is not sold. It has been said that the 28 & 29 Vict. c. 77, s. 2, is inoperative now, as the licensing justices have not now any authority over the grant or renewal of a refreshment-house licence (see * in previous page) for premises which do not sell intoxicating liquor. See 35 & 36 Vict. c. 94, s. 26, and 37 & 38 Vict. c. 49, s. 5, as to beerhouses, *ante*, p. 146, which can now be made available if the 28 & 29 Vict. c. 77, s. 2, is inoperative or not in force. If, however, it is still in force, licensing justices at the general annual licensing meeting, or adjournment, or transfer special sessions for licensing or renewing licences for sale of intoxicating liquors, will exercise its powers in the same way as they would if the refreshment-house sold such liquors. If the 35 & 36 Vict. c. 94, s. 26, is acted upon, that may be done by justices in *petty* sessions out of the metropolis. See *ante*, pp. 145, 146, *vide* Form No. 58, *infra*. See at the commencement of Chapter XVII. for a summary of the law as to all occasional licences, and how they are obtained.

Sect. 26 of
35 & 36 Vict.
c. 94, cumu-
lative upon
these acts.

FORMS.

At a petty sessions of her Majesty's justices of the peace for
the division of in the [county] of held
at on the day of 187 :

(57) Occa-
sional licence
exempting
house from
Closing Act
on a special
occasion (27
& 28 Vict.
c. 64, s. 7).

We, the undersigned, two of the justices assembled at the said petty sessions [being the local authority in this behalf] upon the application of *A. B.*, of in the said division, the keeper of a refreshment-house, situate in street, in there, do hereby, in pursuance of the Public House Closing Act, 1864, grant to the said *A. B.* this occasional licence, exempting him from the provisions of the said act during the hours and on the special occasion [or occasions] hereunder specified (that is to say),—

[during the hours between one and four o'clock in the morn-
ing of each day except Sunday, *or as the case may be*, in
every week from the date of this licence, until the
day of next and no longer, in order that the said

Ch. 14.—*As to Refreshment Houses, &c.*

house may be kept open for the accommodation of
&c.]

[*or* during the hours between one and four o'clock on the morning of Thursday, the day of instant, in order that the said *A. B.* may be enabled to sell victuals and refreshment on the occasion of a to be then held in the neighbourhood of the said house.]

Given under our hands and seals at the petty sessions aforesaid.

[*Justices' signatures and seals.*]

(58) Licence of licensing justices granted at annual licensing meeting, &c. exempting refreshment-houses from certain hours of closing in places where Public House Closing Acts adopted (28 & 29 Vict. c. 77, s. 2).

At [an adjournment of] the general annual licensing meeting [*or* at a special sessions for granting and transferring licences] holden at for the division of in the [county] of on the day of 187 :

It having been duly shown to us, the undersigned [*two*] of the licensing justices acting for the said division, and being the majority of three at the said meeting [*or* session] assembled, that it is necessary and desirable so to do for the accommodation of a considerable number of persons attending the public market [*or* persons following their lawful trade and calling of] at we do, in pursuance of the Public House Closing Act, 1865, grant to *C. D.*, a refreshment-house keeper, now dwelling in street, in the said division, and keeping there a refreshment-house, in the immediate neighbourhood of the said market [*or* place where the said persons follow their said trade and calling], (but not for the sale or consumption of any intoxicating liquor,) this one licence, exempting him from the provisions of the Public House Closing Act, 1864, between the hours of at night and of the clock in the morning of any day [except Sunday, &c. *if so*] [*or as the case may be*] from the day of the date hereof, until this licence shall be withdrawn by the licensing justices of the said division [*or* until the next general annual licensing meeting for the said division, *or as the justices may determine*]: Provided that a printed notice stating the days and special hours during which and the class of persons for whom the said house is open under this licence shall be affixed in a conspicuous position outside the said house.

Given under our hands and seals at the [adjourned] general annual licensing meeting [*or* special sessions] aforesaid.

[*Justices' signatures and seals.*]

CHAPTER XV.

EXCISE PENALTIES AND THEIR RECOVERY.

It is mentioned at page 24 that the sect. 59 of the Licensing Act, 1872, 35 & 36 Vict. c. 94, there given, will not allow persons being punished under that act as well as any other for the same offence, whether an act relating to the excise or inland revenue.

Preliminary observations.

The excise penalties we purpose to refer to here are those contained in the acts recited in or repealed by the 35 & 36 Vict. c. 94, it being impossible to include in this work all the excise penalties scattered throughout the statute book relating to exciseable or intoxicating liquors.

(1) *Excise Penalties*, infra.

(2) *Mode of Recovery of Excise Penalties*, p. 251.

(1) *Excise Penalties.*

1 Will. 4, c. 64, s. 7, enacts, "That no person shall sell any beer by retail under the provisions of this act at any time after the expiration of any licence granted under this act, nor in any house or place not specified in such licence :—provided always, that it shall be lawful for any person so licensed to take out a fresh retail licence for the selling beer by retail before the expiration of any former retail licence, and so from year to year ;—and if any person not being duly licensed to sell beer as the keeper of a common inn, alehouse, or victualling house, shall sell any beer by retail without having an excise retail licence in force

No person shall sell beer after expiration of his licence.

1 Will. 4, c. 64, s. 7. Licence may be renewed yearly.

Ib.

Penalty on selling without licence, 20*l.*
Ib.

1 WILL. 4, c. 64,
s. 7.

authorizing such person so to do, *or* after the expiration of any such licence, *or* without renewing such licence in manner aforesaid, *or* in any house or place not specified in such licence,—*or* if any such person so licensed shall deal in or retail any wine *or* spirits,—every such person so offending shall for every such offence forfeit and lose the sum of twenty pounds.”

A single justices’ licence may give permission to take out more than one excise licence, 37 & 38 Vict. c. 49, s. 23.

Id. ss. 8, 9.

By sect. 8, this penalty is to be recovered, mitigated, &c. as other excise penalties, one moiety being paid to her Majesty, and the other moiety to the informer, but see now, *post*, p. 253, thereon ;—sect. 9 extends the powers of the Excise Act, 7 & 8 Geo. 4, c. 53, to this act. See 35 & 36 Vict. c. 94, s. 3, and note thereto, *ante*, pp. 155—157, and 37 & 38 Vict. c. 49, s. 12, *ante*, p. 217.

Penalty on
unlicensed
persons sell-
ing beer or
cider by retail
to be drank
off the pre-
mises, 10l.;
to be drank
on the pre-
mises, 30l.
4 & 5 WILL. 4,
c. 85, s. 17.

4 & 5 Will. 4, c. 85, s. 17, enacts, “That every person not being duly licensed to sell beer, cider, and perry as the keeper of a common inn, alehouse, or victualling-house who shall sell any beer *or* cider *or* perry by retail, *not* to be drank or consumed in or upon the house or premises where sold, without having an excise retail licence in force authorizing him so to do, shall forfeit ten pounds ;—and every person not being duly licensed to sell beer, cider, and perry as the keeper of a common inn, alehouse, or victualling-house, who shall sell any beer, cider, *or* perry by retail, to be drank or consumed *in or upon* the house or premises where sold, without having an excise retail licence in force authorizing him so to do, whether such person shall or shall not be licensed to sell beer to be drank or consumed off the premises where sold, shall forfeit twenty pounds ;—which said penalties shall be sued for and recovered, mitigated and applied, by the same means and under the same provisions as any other penalty

may be sued for and recovered, mitigated and applied, under any law or laws of excise.” 4 & 5 Will. 4, c. 85, s. 17.

See 35 & 36 Vict. c. 94, s. 8, *ante*, p. 155, and note thereto, *ante*, p. 157.

4 & 5 Will. 4, c. 85, s. 20, recites that “doubts have been entertained whether persons licensed to sell beer or cider under the said act of the first year of his Majesty’s reign [1 Will. 4, c. 64], who shall sell spirits or wine, or sweets or made wines, or mead or metheglin, without being licensed so to do, are liable to the penalties imposed by the laws of excise for selling spirits or wine, or sweets or made wines, or mead or metheglin, without licence:” and enacts, “That all persons licensed under the said recited act and this act, selling wine or spirits, or any sweets or made wines, or mead or metheglin, shall be liable to and shall incur all the penalties imposed by the laws of excise for selling spirits or wine, sweets or made wines, mead or metheglin, without licence” (a).

Persons licensed to sell beer or cider under this act liable to penalties for selling spirits or wine without licence.
Id. s. 20.

(a) The penalty for selling spirits without licence is 50*l.* (6 Geo. 4, c. 81, ss. 26, 27); 100*l.* (by 23 & 24 Vict. c. 114, s. 195);—selling wine without licence, 20*l.* (23 Vict. c. 27, s. 19, p. 249);—selling sweets, &c. without licence, 50*l.* (6 Geo. 4, c. 81, ss. 26, 27; 23 & 24 Vict. c. 113, s. 7). By sect. 16 of the act, set out *ante*, p. 182, it was provided that licences under this act were not to authorize persons to hold licences for sale of wine, and there was a penalty of 20*l.* for permitting wine or spirits or sweets to be consumed on the premises. But now 24 & 25 Vict. c. 91, s. 10, provides that persons licensed to sell beer are not precluded from taking out wine licences under 23 Vict. c. 27; or if licensed for wine liable to any penalty under the Beer Acts for dealing in wine or sweets, &c. (sect. 11).

Sect. 16.

24 & 25 Vict. c. 91, ss. 10, 11.

3 & 4 Vict. c. 61, s. 7, enacts, “That every person who shall hereafter be lawfully convicted of felony, or of selling spirits without a licence, shall for ever thereafter be disqualified from selling beer and cider by retail, and no licence to sell beer and cider by retail, under the said recited acts [1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85] or this act shall be granted to any person who shall be so convicted as aforesaid;—and if any such

Licences to be void on conviction of felony or of selling spirits without licence.

3 & 4 Vict. c. 61, s. 7.

3 & 4 Vict.
c. 61, s. 7.

person shall, after having been so convicted as aforesaid, take out *or* have any licence to sell beer *or* cider by retail under the said recited acts or this act, the same shall be void to all intents and purposes,—and every person who shall, after being convicted as aforesaid, sell any beer *or* cider by retail, in any manner whatsoever, shall incur the penalty for so doing without licence (a),—and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof.”

(a) The penalties are: 20*l.* under 1 Will. 4, c. 64, s. 7; 10*l.* under 4 & 5 Will. 4, c. 85, s. 17, for sale *off*; 20*l.* for sale *on* the premises.

As to the temporary continuance of licences forfeited for single offences, see 37 & 38 Vict. c. 49, s. 15, *ante*, p. 192.

Persons
licensed to
retail beer or
cider to make
entry with
the excise.
7 & 8 Geo. 4,
c. 58.

Sect. 9 enacts, “That every person whatever licensed to retail beer or cider under the said recited act or this act shall, in manner directed by an act passed in the seventh and eighth years of the reign of his late Majesty King George the Fourth, intituled “An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland,” and by another act passed in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled “An Act to amend the Laws relating to the Collection and Management of the Revenue of Excise,” make entry with the officers of excise of every house, cellar, room, and place for storing, keeping, or retailing beer or cider, on pain of forfeiting the penalties imposed by the said last-mentioned act for making use of any unentered room or place (a);—and all beer and cider found in any such unentered house, cellar, room, or place shall be forfeited.”

4 & 5 Will. 4.
c. 51.

(a) The penalty is 200*l.* by 4 & 5 Will. 4, c. 51, s. 6.

By the Refreshment Houses Act, 23 Vict. c. 27, s. 9, "Every person who shall keep a refreshment-house for which a licence is required by this act, without taking out and having in force a proper licence in that behalf granted to him under the authority of this act, shall forfeit a sum not exceeding twenty pounds, which penalty shall be recovered as hereinafter directed" (a).

23 Vict. c. 27.
Penalty for keeping a refreshment-house without licence, 204.
Sect. 9.

(a) Now applicable only to coffee-houses or night-houses open after ten o'clock P.M. See sect. 6, and 24 & 25 Vict. c. 91, s. 8, *ante*, pp. 71, 72. The penalty is an excise penalty as provided by 23 & 24 Vict. c. 113, s. 42. By 23 Vict. c. 27, s. 43, the penalties denominated excise penalties are to be recovered as penalties under the laws of excise, see *post*, p. 251.

23 Vict. c. 27, s. 19: "Every person who shall sell any wine by retail, whether to be consumed on the premises or not, without having a proper licence in force duly authorizing him in that behalf, shall, over and above any other penalty to which he may be liable, forfeit the sum of twenty pounds, which shall be denominated an excise penalty."

Penalty for selling wine by retail without licence.
Ib. s. 19.

See 35 & 36 Vict. c. 94, s. 3, *ante*, p. 155, and note thereto, *ante*, p. 157. Recovery, sect. 43, and *post*, p. 251.

By 23 Vict. c. 27, s. 22, "Every person who shall be convicted of felony or of selling spirits without licence shall for ever thereafter be disqualified from selling wine by retail, and no licence to sell wine by retail under this act shall be granted to any person who shall have been so convicted as aforesaid;—and if any person shall, after having been so convicted as aforesaid, take out or have any licence to sell wine by retail under this act, the same shall be void to all intents and purposes;—and every person who shall, after being convicted as aforesaid, sell any wine by retail in any manner whatsoever, shall incur the penalty for so doing without licence [*i. e.* in sect. 19,

Licences to be void on conviction of felony or selling spirits without licence.
Ib. s. 22.

Penalty.
Ib.

23 Vict. c. 27. *supra*];—and in all such cases, in the prosecution for
Sect. 22. the recovery of such penalty, a certificate from the clerk of assize or the clerk of the peace or person acting as such of any such conviction as aforesaid shall on the trial in such prosecution be legal evidence thereof.”

Vide 35 & 36 Vict. c. 94, s. 3, *ante*, p. 155.

As to the temporary continuance of licences forfeited for single offences, see 37 & 38 Vict. c. 49, s. 15, *ante*, p. 192.

Licensed
retailers of
wine to make
entry of
houses, &c.
with the
excise.
Ib. s. 23.

Sect. 23. “Every person licensed to retail wine under this act shall, in manner directed by the laws of excise in that behalf, make entry with the proper officer of excise of every house, cellar, room, and place for storing, keeping, or retailing of wine, on pain of forfeiting the penalties imposed by the statutes in that behalf for making use of any unentered room or place (a);—and all wine found in any such unentered house, cellar, room, or place shall be forfeited.”

(a) The penalty is 200*l.* by 4 & 5 Will. 4, c. 51, s. 6.

Ib. s. 24.

By sect. 24, “Any officer of excise during the hours in which any house licensed for the retail of wine to be consumed on the premises may be kept open, to enter into every house, cellar, room, or place entered for the storing, keeping, or retailing of wine to be consumed as aforesaid, and to make search for and seize all spirits which may be found in any such house, cellar, room, and place, and to examine all wine kept therein.”

Penalty on
persons
licensed to
retail wine
having spirits
in their
entered pre-
mises.
Ib. s. 25.

Sect. 25. “If any person licensed to retail wine under this act shall receive into or keep or have in his possession, in any cellar, room or place entered for storing, keeping, or retailing wine, any spirits, he shall, in addition to all other penalties, forfeit the sum of fifty pounds, which shall be denominated an excise penalty;—and all spirits found in any such entered cellar, room, or place shall be forfeited;—and on conviction of any such licensed person in any penalty for having spirits in his possession, or for selling or retailing spirits, the licence of such person for retailing

wine shall become null and void, and shall be so adjudged."

(2) *Mode of Recovery of Excise Penalties.*

The principal statutes regulating summary proceedings for penalties are the 7 & 8 Geo. 4, c. 53; 4 & 5 Will. 4, c. 51; 4 Vict. c. 20, and 15 & 16 Vict. c. 61 (*a*).

The Excise
Procedure
Act.

The information for an excise penalty or forfeiture incurred within the limits of the chief office as defined by 7 & 8 Geo. 4, c. 53, s. 14, may be exhibited before three commissioners, or a metropolitan police magistrate, and elsewhere before one or more justices of the peace (7 & 8 Geo. 4, c. 53, s. 65; 15 & 16 Vict. c. 61, ss. 1, 2), by an officer duly authorized by the commissioners, except on immediate arrest (7 & 8 Geo. 4, c. 53, ss. 17, 61; and see 26 Geo. 3, c. 77, s. 13; 46 Geo. 3, c. 112, s. 1; 56 Geo. 3, c. 104, s. 15; 5 Geo. 4, c. 94, and 4 & 5 Will. 4, c. 51, s. 28), and within six calendar months after the offence committed or goods forfeited seized (11 & 12 Vict. c. 118, s. 3). Notice to be given within a week afterwards. Summons to be served ten days before the hearing, except for double duty, when twelve hours' notice is sufficient; service need not be personal, but at place of business or residence (4 & 5 Will. 4, c. 51, s. 19); and it may be made by any officer of excise or other person

Information
and time.

Notice and
summons.

(*a*) The Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43, *ante*, p. 210, Chap. XII.), regulating summary proceedings before justices, does not generally apply to cases under the excise laws (s. 35), for which the officers present the forms for signature by the justices. By 26 & 27 Vict. c. 77, however, certain provisions of the Indictable Offences Act, 1848, 11 & 12 Vict. c. 42 (incorporated with the 11 & 12 Vict. c. 43), authorizing justices of adjoining counties to act in one for the other, and justices for a county to act in a city, &c. adjoining or within it, will apply to the offences in this Chapter.

26 & 27 Vict.
c. 77.

Remanding prisoners.	(4 Vict. c. 20, s. 31). Cases may be heard <i>ex parte</i> after summons (7 & 8 Geo. 4, c. 53, ss. 65, 73). Certain persons may be apprehended (Id. s. 33; and see <i>Evans v. M'Loughlan</i> , 25 J. P. 211). Persons taken before a justice may be remanded for eight days or remitted to bail (23 & 24 Vict. c. 113, s. 39); and by 24 & 25 Vict. c. 91, s. 46, persons in prison against whom informations are exhibited may be brought up by <i>habeas corpus</i> issued from the Court of Exchequer at the hearing of such information. Two or more justices to meet every three months or oftener to adjudge excise cases (7 & 8 Geo. 4, c. 53, s. 67). Regulations in case of the death or absence of any justice, or of the death of the prosecuting officer during proceedings (Id.; 4 & 5 Will. 4, c. 51, s. 22). General powers of justices extended to excise cases (7 & 8 Geo. 4, c. 53, s. 67). No officer of excise to act as a justice in excise cases, nor any excise trader in any case relating to his trade (Id. s. 68), but officers may conduct the proceedings (15 & 16 Vict. c. 61, s. 3). Commissioners and justices to proceed to hearing and judgment without regard to defects in form (7 & 8 Geo. 4, c. 53, s. 73).
Justices to hear cases,	
—or commis- sioners.	
Witnesses.	Witnesses summoned by justices neglecting to appear and give evidence to forfeit 50 <i>l.</i> (s. 74, and see 23 & 24 Vict. c. 114, s. 198). If a defendant be in prison, judgment may be given after summons (7 & 8 Geo. 4, c. 53, s. 77, but see 24 & 25 Vict. c. 91, s. 46); persons incur penalties jointly or severally according as they may be prosecuted by order of the commissioners (s. 70). The commissioners or justices on hearing may mitigate any penalty to one-fourth (s. 78), except the penalty of double duty and on immediate arrest (4 & 5 Will. 4, c. 51, s. 20); and the board may further mitigate or entirely remit the penalty (7 & 8 Geo. 4, c. 53, s. 78). There is no power to award costs to
Penalties on mitigation.	

either party under the excise laws before justices, either in petty or quarter sessions, the 18 & 19 Vict. c. 90, allowing costs in crown suits, applying only to prosecutions for penalties in the Exchequer, in which the Attorney-General is the prosecutor (*Reg. v. Beadle*, 7 El. & Bl. 492; 29 Law T. 76). Warrants to be granted for the sale of goods condemned or levying penalties (s. 86), in which a time for sale must be limited (s. 88). Penalty and expenses to be deducted from the sale, and the overplus returned (s. 89). Where sufficient distress cannot be found, a body warrant may be issued to commit the offender to gaol, to remain until satisfaction be made of the judgment, or until ordered by the commissioners to be liberated or discharged (s. 90). A fresh warrant of distress may be issued when goods are found after the issue or execution of arrest warrant (s. 91). Warrants to be executed in any part of the United Kingdom upon indorsement (s. 92). The Small Penalties Act, 1865, does not apply to any "Inland Revenue" penalty (28 & 29 Vict. c. 127, s. 7).

Enforcing
penalties.

By the 11 & 12 Vict. c. 121, s. 28, no officer of excise is to have any interest in penalties or forfeitures under any law of excise, which are to be paid to the Commissioners of Excise (16 & 17 Vict. c. 107, s. 282; see 23 & 24 Vict. c. 114, s. 199). By 31 & 32 Vict. c. 124, s. 1, "All fines, penalties and forfeitures incurred under any act relating to the inland revenue, and recovered after the first day of October, 1868, shall go and be applied to the use of her Majesty, her heirs, or successors, anything in any act to the contrary notwithstanding;—and all such fines and penalties, and all such forfeitures or the proceeds thereof, and all costs, charges and expenses payable in respect thereof or in relation thereto respectively, shall, without any deduc-

Application
of penalties;

tion therefrom, be paid to the Commissioners of Inland Revenue, or to such officer or person as the said commissioners shall appoint to receive the same." By sect. 2, "the expenses of prosecutions are to be paid out of supplies provided by parliament."

—when sued
for under 35
& 36 Vict.
c. 94, by
excise.

Sect. 51 of the 35 & 36 Vict. c. 94, *ante*, p. 212, provides that "Any officer appointed by the Commissioners of Inland Revenue may sue for any penalties under this act, and when so sued for any penalties which may be recovered shall be applied in the manner in which excise penalties are for the time being applicable by law."

Appeal to
quarter ses-
sions, &c.

Persons aggrieved by judgment of justices may appeal to the quarter sessions (7 & 8 Geo. 4, c. 53, s. 82), giving notice in writing to such justices immediately (*Id.* s. 83), and at the place of abode of the respondent within a given time (4 Vict. c. 20, s. 30; see *Reg. v. Eaves*, 39 L. J. (N. S.) M. C. 70; 21 Law T., N. S. 829); but against the judgment of the commissioners appeal must be made to the barons of the Exchequer (4 Vict. c. 20, s. 26). Notice of appeal and notice of trial to be given, and deposit made of amount of penalty adjudged within three days after adjudication in certain cases (7 & 8 Geo. 4, c. 53, s. 83). If there shall not be twenty days between giving notice and the next sessions, the appeal to be to the following sessions (4 & 5 Will. 4, c. 51, s. 23). On hearing an appeal, the original evidence only to be examined (7 & 8 Geo. 4, c. 53, s. 84); but witnesses tendered for examination at the original hearing may be examined (4 & 5 Will. 4, c. 51, s. 24). Power of mitigation, or to state a case for the Exchequer (7 & 8 Geo. 4, c. 53, s. 84); but the quarter sessions have no power to award costs to either party (*Reg. v. Beadle, supra*). Proceedings on determination of appeal (ss. 85, 87).

In addition to these, the general act 20 & 21 Vict. c. 43 (*ante*, p. 218), allows an appeal to a superior court by the person convicted, or by the informer if his information is dismissed, when the justices' decision is erroneous on a point of law.

Appeal to
superior
court on a
question of
law.

20 & 21 Vict.
c. 43.

FORM.

The General Forms in use by the Inland Revenue Board are given in Oke's "Magisterial Formulist," 4th ed., pp. 444—450.

CHAPTER XVI.

AS TO BILLIARD LICENCES.

Grant or
transfer of
billiard
licences.

8 & 9 Vict.
c. 109.

As to the grant of billiard licences for the keeping of "public billiard tables and bagatelle boards, or instruments used in any game of the like kind," they are granted under the authority of 8 & 9 Vict. c. 109, s. 10, by justices at the general annual licensing meeting held for granting licences to alehouses or at an adjournment of it, and transferred at special sessions held for transferring such licences. The like notices are to be given by applicants for such billiard licences as then required for alehouse licences under the 9 Geo. 4, c. 61, and now it is the same under the amended mode prescribed by the Licensing Act, 1872, 35 & 36 Vict. c. 94 (see sect. 75, *post*, p. 258). Alehouse keepers are not required, as will be seen, to take out this licence (though of course they must not allow "gaming" at billiards, see 35 & 36 Vict. c. 94, s. 17, and note (*a*) thereto, *ante*, p. 167), but keepers of beerhouses and all other persons not consuming on their premises *exciseable* liquors (beer and sweets not being such now), must do so if they keep a billiard table or bagatelle board for public playing (see 8 & 9 Vict. c. 109, s. 11, *post*, p. 259).

- (1) *Grant of Billiard Licences*, p. 257.
- (2) *Offences in relation to Billiard Licences and the Licensed Premises*, p. 260.
- (3) *Mode of Recovery of Penalties*, p. 264.

(1) *Grant of Billiard Licences.*

The 8 & 9 Vict. c. 109 ("An Act to amend the Law concerning Games and Wagers"), s. 10, enacts, "That the justices in every division, district, and place in England for which a special session of the justices of the peace (called the general annual licensing meeting) is holden annually for granting licences to persons keeping or being about to keep inns, alehouses, and victualling-houses to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified (*a*), shall have authority at such general annual licensing meeting, *or* at any adjournment thereof, to grant billiard licences to such persons as the said justices shall in their discretion deem fit and proper (*b*) to keep public billiard tables and bagatelle boards or instruments used in any game of the like kind,—and at the special sessions holden for transferring licences to keep inns shall have authority to transfer such billiard licences to such other persons as they in their discretion shall deem fit and proper to continue to hold the same (*c*)—and who in each case shall be required to give the like notice of their intention to apply for such billiard licence, and entitled to receive the like notice of the licensing days as is required in the case of persons intending to apply for a licence or the transfer of a licence to sell exciseable liquors by retail to be drunk or consumed on the premises, or as near thereto as the case will allow (*d*);— and every such billiard licence shall be in the form given in the third schedule annexed to this act, and shall continue in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October, after the granting thereof, for one whole year thence respectively next

Justices may grant billiard licences at licensing sessions:
8 & 9 Vict. c. 109, s. 10.

—Notice of application as for alehouse licences:

—Licence in force for a year.

8 & 9 Vict.
c. 109.

Sect. 10.
Fees to clerk
of justices for
licence.
Ib.

Penalty for
taking more.
Ib.

ensuing, and no longer (e);—and the clerk of the justices shall be entitled to demand and receive from every person licensed under this act, for the petty constable or other peace officer, for serving notices and other services required of him, the sum of one shilling, and for the clerk of the justices, for the licence, the sum of five shillings;—and every clerk who shall demand or receive from any person for such fees more than the said sums, being together six shillings, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds" (f).

35 & 36 Vict.
c. 94, s. 75
(proviso in
part).

At the close of the repealing clause, sect. 75 of the Licensing Act, 1872, 35 & 36 Vict. c. 94 (the repealing enactment being set out *ante*, p. 17), there is a proviso applicable to the above enactment, the pertinent portion of it being as follows:—"That in the case of persons intending to apply for billiard licences under the act of the eighth and ninth years of the reign of her present Majesty, chapter one hundred and nine, intituled 'An Act to amend the Law concerning Games and Wagers,'—or for the transfer of such licences,—the same notices shall be given as are by this act required in the case of licences as defined by this act, or as near thereto as circumstances admit."

The under-mentioned lettered notes are written in view of this proviso:

(a) The provisions of 9 Geo. 4, c. 61, as to convening and holding of the general annual licensing meeting for alehouses and the adjournment thereof are given *ante*, p. 51 (Chap. II.). See adapted forms, No. 59, *post*, p. 266.

(b) As to who should be licensed for billiards and who are entitled to keep a public billiard table without licence, see 8 & 9 Vict. c. 109, s. 11, and decision thereon, p. 259.

(c) The provisions of the 9 Geo. 4, c. 61, and other acts as to appointing and holding special sessions for transferring alehouse licences are given *ante*, p. 107 (Chap. V.). *Vide* adapted forms, No. 61, *post*, p. 266. See note (b) as to persons to be licensed and who, therefore, can hold a transfer.

(d) The provisions as to notice of application for a new billiard licence as now required, in consequence of the amendment of the law contained in 9 Geo. 4, c. 61, by 35 & 36 Vict. c. 94, and other acts, which sect. 75, set out *infra*, now applies to these billiard licences, are shown *ante*, pp. 58, 59, 60. The form of notice of application is No. 60, *post*, p. 266.

The *renewal* of a licence is not provided for, and therefore it should be treated as a new licence, and grantable at special ses-

sions held after the annual licensing meeting (but before the expiration of the old licence), for which no notice will be required like cases under 9 Geo. 4, c. 61, s. 14, *ante*, pp. 109—113.

The notices of intention to transfer a billiard licence as now required are shown *ante*, p. 108. The form of notice is No. 62, *post*, p. 266, the form of transfer of licence, No. 64, *post*, p. 267.

(e) *Vide* the form given in the schedule to 8 & 9 Vict. c. 109, No. 63, *post*, p. 266, which is not affected by any provision of the 35 & 36 Vict. c. 94.

(f) *Vide* the mode of recovery of penalty, *post*, p. 264.

8 & 9 Vict. c. 109, s. 11, enacts (*inter alia*), "That every house, room, or place kept for public billiard playing, or where a public billiard table or bagatelle board, or instrument used in any game of the like kind, is kept, at which persons are admitted to play,—except in houses or premises specified in any licence granted under an act passed in the ninth year of the reign of King George the Fourth, intituled 'An Act to regulate the granting of Licences to Keepers of Inns, Alehouses, and Victualling-houses in England,' herein-after called a victualler's licence,—shall be licensed under this act."

8 & 9 Vict.
c. 109.

Houses
which are to
take out a
billiard
licence.
Ib. s. 11.

[9 Geo. 4,
c. 61.]

The licensed alehouse keeper and no one else is specially exempted by this section from taking out a billiard licence; but if he has a billiard table, he must keep the billiard room closed at such times as play at houses licensed for billiards is not allowed (see sect. 13, *infra*). In the form of billiard licence given in the schedule to 8 & 9 Vict. c. 109 (No. 63, *post*, p. 266), it will be seen there is this prohibition or condition,—“and do not knowingly allow the consumption of *exciseable* liquors therein by the persons resorting thereto;” but as it was held in *Jones v. Whitaker* (39 L. J., N. S. 139; 22 Law T., N. S. 535; affirming *Lancashire v. Justices of Staffordshire*, 26 L. J. (N. S.) M. C. 171), that neither beer nor sweets is now an exciseable liquor, beer-house keepers and other persons, where beer or sweets are consumed, may take out a licence, and are not liable to be proceeded against for an offence against the tenor of the billiard licence, if they allow those liquors to be consumed on their premises. The playing at billiards or bagatelle, &c. are not, since 8 & 9 Vict. c. 109, unlawful games. See note (a), *ante*, p. 167.

If the justices refuse to grant a billiard or bagatelle

No appeal
against re-

refusal to grant
a billiard
licence.

licence, there is no appeal, as there was at the time of the passing in 1845 of the 8 & 9 Vict. c. 109, in respect to alehouse licences, it being so held in the year 1857, in the case of *Reg. v. Justices of Devonshire* (30 Law T. 150; *Ex parte Chamberlain*, 8 E. & B. 644); nor is there an appeal against the refusal to transfer a licence; and the 35 & 36 Vict. c. 94, s. 75, *supra*, does not extend the law as to such appeal in regard to alehouse and other licences, to billiard or bagatelle licences.

(2) *Offences in relation to Billiard Licences and the Licensed Premises.*

Offences in
the 8 & 9
Vict. c. 109,
to be
punished as
licensed per-
sons are to be
punished for
gaming, by
35 & 36 Vict.
c. 94, s. 17.

35 & 36 Vict.
c. 94, s. 75
(proviso in
part).

By the proviso to sect. 75 of 35 & 36 Vict. c. 94, it is enacted (*inter alia*, the remaining portion of it being given *ante*, p. 258),—"Any person convicted of an offence against the tenor of a billiard licence,—or of any offence declared by the last-mentioned act to be an offence against the tenor of a licence, as defined by this act, shall be punished under this act in the same manner in all respects as a licensed person, within the meaning of this act, is punishable under this act for suffering any gaming *or* any unlawful game to be carried on on his premises [*i. e.*, by sect. 17, *ante*, p. 167];—and in construing the last-mentioned act any reference to the 'Intoxicating Liquor Licensing Act, 1828' [*i. e.*, 9 Geo. 4, c. 61], shall be construed to refer to that act as amended by this act."

The offences referred to in this enactment, as against the tenor of a billiard licence, are enacted in the 8 & 9 Vict. c. 109, ss. 12, 13, 14, and are as follow:—

Offences
against the
tenor of
licences.
8 & 9 Vict.
c. 109, s. 12.

Sect. 12 enacts, "Every person licensed under this act who shall be convicted before a police magistrate or two justices acting in and for the division or place in which shall be situated the house kept or theretofore kept by such person of any offence against the tenor of the licence to him granted (*a*), shall be liable to the same

penalties and punishments in the case of a first, second, or third offence respectively to which persons licensed under an act passed in the ninth year of the reign of King George the Fourth, intitled 'An Act to regulate the granting of Licences to Keepers of Inns, Alehouses, and Victualling-houses in England,' are respectively liable on conviction of a first, second, or third offence against the tenor of the licence granted to them under the last-recited act, or as near thereunto as the nature of the case will allow: [and all the provisions of the last-recited act (b) with respect to convictions and penalties for offences against the last-recited act, and the proceedings for enforcing the same, and to the expenses of prosecution and penalties on witnesses for not attending, and the recovery and application of penalties, and the proceedings on appeals against convictions, and the award of costs on appeals, and in actions against justices, constables, or other persons for anything done in execution of the last-recited act, shall be deemed to apply so far as they are applicable, to convictions for offences against the tenor of the licences granted under this act, and to the proceedings consequent thereupon or connected therewith, as if they were herein re-enacted"] (c).

8 & 9 Vict.
c. 109, s. 12.

[9 Geo. 4,
c. 61.]

(a) The conditions in the billiard licence are similar to those in the old alehouse licence, as will be seen by reference to the Form of Licence, No. 63, *post*, p. 266, and are as follow:

1. That he put and keep up the words "Licensed for billiards" legibly printed in some conspicuous place near the door, and on the outside of the said house [in sect. 11, p. 263, also]:
2. Do not wilfully *or* knowingly permit drunkenness *or* other disorderly conduct in the said house:
3. Do not knowingly allow the consumption of exciseable liquors therein by the persons resorting thereto [see note to sect. 11, *ante*, p. 259]:
4. Do not knowingly suffer any unlawful games therein [see now 35 & 36 Vict. c. 94, s. 17, *ante*, p. 167]:
5. Do not knowingly suffer persons of notoriously bad character to assemble and meet together therein:
6. Do not open the said house for play *or* allow any play therein after one and before eight of the clock in the morning [in sect. 13, p. 262 also]:
7. *Or* keep it open *or* allow any play therein on Sundays, Christmas Day, *or* Good Friday, *or* on any day appointed for a public fast or thanksgiving [in sect. 13, p. 262 also]:
8. But do maintain good order and rule therein,

8 & 9 Vict.
c. 109.

(b) The recited act is 9 Geo. 4, c. 61. See now the enactments in 35 & 36 Vict. c. 94, s. 17, *ante*, p. 167, and other enactments in that act auxiliary thereto, particularly sects. 30, 31, as to repeated convictions, set out in Chap. X., *ante*, p. 187, *et seqq.*

(c) This portion between brackets [] is repealed by the terms of the 35 & 36 Vict. c. 94, s. 75, cited p. 260, and now such of the provisions of the 9 Geo. 4, c. 61, as are in force, and amended by the Wine and Beerhouse Acts, 1869, 1870, and the 35 & 36 Vict. c. 94, apply to offences against the tenor of a billiard licence in the same way as those acts apply to the offence of gaming, &c. under 35 & 36 Vict. c. 94, s. 17, *ante*, p. 167.

When
billiard play-
ing shall not
be allowed.
Ib. s. 13.

Sect. 13. "Every person keeping any public billiard table *or* bagatelle board, *or* instrument used in any game of the like kind, whether he be the holder of a victualler's licence *or* licensed under this act, who shall allow any person to play at such table, board, *or* instrument after one and before eight of the clock in the morning of any day, *or* at any time on Sundays, Christmas Day, or Good Friday, *or* any day appointed to be kept as a public fast or thanksgiving ;—and every person holding a victualler's licence who shall allow any person to play at such table, board, or instrument kept on the premises specified in such victualler's licence at any time when such premises are not by law allowed to be open for the sale of wine, spirits or beer, or other fermented or distilled liquors, shall be liable to the penalties herein provided in the case of persons keeping such public billiard table, bagatelle board, or instrument as aforesaid for public use without licence [*i. e.*, in sect. 11, *infra*];—and during those times when play at such table, board, or instrument is not allowed by this act, every house licensed under this act, and every billiard room in every house specified in any victualler's licence, shall be closed, and the keeping of the same open, *or* allowing any person to play therein or thereat, at any of the times or on any of the days during which such play is not allowed by this act, shall be deemed in each case an offence against the tenor of the licence of the person so offending."

Penalty.
Ib.

Empowering
constables to
visit licensed
houses.
Ib. s. 14.
Penalty.
Ib.

Sect. 14. "It shall be lawful for all constables and officers of police to enter into any house, room, or place where any public table or board is kept for playing at billiards, bagatelle, *or* any game of the like kind, when and so often as such constables and officers shall think proper ;—and every person licensed under the said act of the ninth year of the reign of King George the Fourth [9 Geo. 4, c. 61], *or* under this act, who shall refuse to admit *or*

[9 Geo. 4,
c. 61.]

who shall not admit any such constable or officer of police into such house, room, or place shall, on conviction thereof before a police magistrate or any two justices of the peace, be deemed guilty of an offence against the tenor of his licence, whether the same be a billiard licence or a victualler's licence, and in the case of a first, second, third, or subsequent offence shall be punished accordingly."

8 & 9 Vict.
c. 109.

Sect. 11 enacts (*inter alia*, the remaining portion being given, p. 259),—"Every person keeping any such public billiard table or bagatelle board or instrument used in any game of the like kind for public use, without being duly licensed so to do, and not holding a victualler's licence for the house or premises where such billiard table, bagatelle board, or other instrument as aforesaid is kept or used,—and also every person licensed under this act who shall not during the continuance of such billiard licence put and keep up the words 'Licensed for billiards,' legibly printed in some conspicuous place near the door and on the outside of the house specified in the licence [*i. e.*, also an offence against the tenor of a licence; see sect. 12, pp. 260, 261],—shall be liable to be proceeded against as the keeper of a common gaming-house, and, beside any penalty or punishment to which he may be liable if convicted of keeping a common gaming-house [see sect. 4], shall, on conviction of keeping such unlicensed billiard table, bagatelle board, or other instrument as aforesaid, by his own confession, or by the oath of one or more credible witnesses before any police magistrate or any two justices of the peace, be liable to pay such penalty, not more than ten pounds for every day on which such billiard table, bagatelle board, or instrument as aforesaid shall be used, as shall be adjudged by the magistrate or justices before whom he shall be convicted, or, in the discretion of the magistrate or justices, may be committed to the house of correction

Keeping
billiard table,
&c. without
licence, or
licensed per-
son not
having words
up on house.
Id. s. 11.

8 & 9 Vict.
c. 109.
Sect. 11.

with or without hard labour for any time not more than one calendar month;—and on nonpayment of any penalty so adjudged, and of the reasonable costs and charges of the conviction, the same shall be levied by distress and sale of the goods and chattels of the offender by warrant under the hand and seal of the magistrate or one of the convicting justices;—but no person who shall have been summarily convicted of any such offence shall be liable to be further proceeded against by indictment for the same offence.”

(3) *Mode of Recovery of Penalties.*

For offences
against the
tenor of
billiard
licence.

For the recovery of penalties for offences against the tenor of a billiard licence, or declared to be so, as referred to in the sections of 8 & 9 Vict. c. 109, cited under 35 & 36 Vict. c. 94, s. 75, *ante*, pp. 260—262, the mode will be as set forth in Chap. XII., *ante*, p. 210.

For offences
under 8 & 9
Vict. c. 109,
s. 11;

The mode of recovery of the penalty for the offences under 8 & 9 Vict. c. 109, s. 11, which is the only other penalty (not declared in respect of an offence “against the tenor of a billiard licence,” and this section does not contain a “reference” to the 9 Geo. 4, c. 61), will be shortly this :—

—under 11
& 12 Vict.
c. 43.

The information must be laid within six calendar months (11 & 12 Vict. c. 43, s. 11).

Summons or warrant in the first instance, and all the other proceedings before the hearing, as stated *ante*, pp. 215, 216, as well as the hearing, recovery of costs, *ante*, p. 216; scale of imprisonment in default or distress for penalty and costs (28 & 29 Vict. c. 127, *ante*, p. 213, and 11 & 12 Vict. c. 43, s. 22, and 21 & 22 Vict. c. 73, s. 5).

Application of the penalties (see 11 & 12 Vict. c. 43, s. 31). 8 & 9 Vict.
c. 109.

An appeal is allowed by 8 & 9 Vict. c. 109, s. 20, to any person summarily convicted, "to the next general or quarter session of the peace to be holden for the county or place wherein the cause of complaint shall have arisen,—provided that such person at the time of the conviction, *or* within forty-eight hours thereafter, shall enter into a recognizance, with two sufficient securities, conditioned personally to appear at the said session to try such appeal, and to abide the further judgment of the court at such session, and to pay such costs as shall be by the last-mentioned court awarded;—and the magistrate or justices by whom such conviction shall have been made to bind over the witnesses who shall have been examined in sufficient recognizances to attend and be examined at the hearing of such appeal;—and that every such witness, on producing a certificate of being so bound, under the hand of the said magistrate or justices, shall be allowed compensation for his or her time, trouble, and expenses in attending the appeal, which compensation shall be paid in the first instance by the treasurer of the county or place, in like manner as in cases of misdemeanor, under the provisions of an act passed in the seventh year of the reign of King George the Fourth, intituled 'An Act for improving the Administration of Criminal Justice in England,'—and in case the appeal shall be dismissed, and the order or conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the Court, shall be repaid to the said treasurer by the appellant." Appeal
against con-
viction.
Id. s. 20.

By sect. 25, convictions, &c. are not to be quashed for informality, &c. 7 Geo. 4, c. 64.

8 & 9 Vict.
c. 109, s. 25.

FORMS.

(59) Receipt and order for appointing general annual meeting and adjournment, and notices thereof.

For the forms as to appointing and convening the general annual licensing meeting, see Forms Nos. 1, 2 and 3, *ante*, pp. 67—69, and of adjournment of such meeting, see No. 5, *ante*, p. 70, which are already adapted to billiard licences, and need not be separately given for the liquor licences.

(60) Notice of application for a new licence.

[*Proceed as in the form of application for an alehouse licence, No. 4, ante, p. 69, adding at the †—“Licence to keep the house [or room, or place] now occupied by me as a house, situate in*

in the said division, for public billiard playing,

[or a licence for public billiard playing at the house, or room or place situate in

[or a licence to keep a public billiard table or bagatelle board at the house, or room or place, situate in, &c.]

[Concluding as in that form, but omitting the part about the six-day licence.]

(61) Appointment of transfer days, and notices thereof.

[The forms applicable to transfer days are Nos. 16, 17, 18, *ante*, pp. 119, 120, which are adapted to billiard licences, no separate notices, &c. being required.]

(62) Notice of application to transfer a billiard licence.

[The form No. 19, *ante*, p. 120, is easily adapted by omitting the portions as to intoxicating liquors.]

(63) Billiard licence (in schedule to S & 9 Vict. c. 109).

At the general annual licensing meeting [*or an adjournment of the general annual licensing meeting, or at a special petty session*] of her Majesty's justices of the peace acting for the division [*or liberty, &c., as the case may be*] of in the county of holden at on the day of in the year of our Lord 187 , for the purpose of granting billiard licences:

We being of her Majesty's justices of the peace acting for the said county [*or liberty, &c., as the case may be*], and being the majority of those assembled at the said session, do hereby authorize and empower A. L., now dwelling at in the parish of to keep a house for public billiard playing at [*here specify the house*], provided that he [*or she*] put and keep up the words, "Licensed for billiards" legibly painted in some conspicuous place near the door and on the outside of the said house, and do not wilfully or knowingly permit drunkenness

or other disorderly conduct in the said house, and do not knowingly allow the consumption of exciseable liquors therein by the persons resorting thereto, and do not knowingly suffer any unlawful games therein, and do not knowingly suffer persons of notoriously bad character to assemble and meet together therein, and do not open the said house for play or allow any play therein after one and before eight of the clock in the morning, or keep it open or allow any play therein on Sundays, Christmas Day, or Good Friday, or on any day appointed for a public fast or thanksgiving, but do maintain good order and rule therein: and this licence shall continue in force from the day of next, until the day of then next following, and no longer.

Given under our hands and seals on the day and at the place first written.

[*Justices' signatures and seals.*]

At a special sessions holden at on the day of for the division of in the [*county*] of :

(64) *Transfer of licence by indorsement.*

We, being of her Majesty's justices of the peace acting in and for the said division, and being the majority of those at the said sessions assembled,—

Hereby, pursuant to the acts in that behalf, licence one *C. D.* of and transfer to him the licence within contained now held by the within-named *A. B.*

This transfer to be in force from this day until the remainder of the term of the within licence.

Given under our hands and seals at the special sessions aforesaid.

[*Justices' signatures and seals.*]

CHAPTER XVII.

OCCASIONAL LICENCES NOT WITHIN THE LICENSING
ACTS, 1872, 1874.

Occasional
licences here
intended.

THE occasional licences excepted from the operation of the Licensing Act, 1872, 35 & 36 Vict. c. 94, by subs. 6 of sect. 72, *ante*, p. 21, and treated of in this Chapter, are different from the exemption *order* under sect. 26, *ante*, pp. 144, 145, or the exemption *licence* under sect. 29, and 37 & 38 Vict. c. 49, s. 5, *ante*, pp. 147, 148 (both of which relate to the hours for opening and closing houses), and are those granted by the excise on the certificate of one justice under the provisions of the 25 & 26 Vict. c. 22, s. 13, and 27 & 28 Vict. c. 18, s. 5, which we shall presently give.

Cumulative
upon certain
other pro-
visions.

The sect. 26 of 35 & 36 Vict. c. 94, *ante*, pp. 144, 145, applies to the same occasions as those mentioned in the enactments in this chapter, and that section is cumulative upon them; and so are those exemption licences authorized to be granted under the Public House Closing Acts, treated of in Chap. XIV. (*ante*, pp. 237—243), to refreshment-houses not selling intoxicating liquors.

Summary of
all the pro-
visions:

As a general result of the whole of the provisions in this chapter as well as in Chap. XIV., and in the Licensing Acts, 1872 and 1874, it may be briefly stated, that,—

Licensed vic-
tualler or
refreshment-
house keeper
wishing to
exceed legal

1. A licensed victualler, or refreshment-house keeper selling intoxicating liquors, requiring an authority to exceed the legal hours stated in 37 & 38

Vict. c. 49, s. 3, *ante*, p. 135, on the occasion of a public ball, supper, *or* show, regatta, &c., &c. at his house or in the neighbourhood, must obtain an exemption licence to sell his articles on *his licensed* premises out of the metropolis (for the police have authority in the metropolis), from two justices, under 35 & 36 Vict. c. 94, s. 29, *ante*, p. 147, and, of course, without any additional excise licence being required :

hours on his premises.

2. A licensed victualler requiring an authority on the occasion of a public ball, supper, *or* a show, sport, &c. to sell his liquors or tobacco *at another place than his licensed* premises, must obtain a certificate from one justice where such *other* place is situated (whether in or out of the metropolis) under 25 & 26 Vict. c. 22, s. 13, *post*, p. 271, before he can get the excise three-day licence, which is required for each house, tent, or booth used :

Licensed victualler desiring to sell away from his premises.

3. A licensed refreshment-house keeper whether selling refreshments only *or* wine,—*or* a beer-house keeper licensed for consumption on the premises—requiring an authority on the occasion of a public ball or dinner, *or* a sport, show *or* a public race *or* fair to sell his liquors, refreshments *or* tobacco *at another place than his licensed* premises, must obtain a certificate from one justice where such *other* place is situated (whether in or out of the metropolis) under 27 & 28 Vict. c. 18, s. 5, *post*, p. 273, before he can get the excise three-day licence, which is required for each house, tent, or booth used :

Refreshment or beerhouse keeper desiring to sell away from his premises.

4. A licensed refreshment-house keeper in the metropolis, or in those places outside which have adopted the Public House Closing Act, 1864,

Refreshment-house keeper not selling intoxicating liquor, de-

string to sell refreshments, &c. on his premises on the occasion of a ball, &c.

desiring to sell refreshments or liquor other than intoxicating liquors on *his licensed* premises between the hours of one and four in the morning, on the occasion of a public ball, *or* dinner, *or* show, &c., must obtain an *exemption* licence under 35 & 36 Vict. c. 94, s. 26, *ante*, pp. 144, 145, *or* 27 & 28 Vict. c. 64, s. 7 (*ante*, p. 241)—if under sect. 26 and the premises are in the metropolis, from the police authorities ; if outside, from two justices in petty sessions ;—if under 27 & 28 Vict. c. 64, s. 7, from the police authority in the metropolitan police district, and from two justices in the city of London as well as outside the metropolitan police district. Of course, no additional excise licence is required when the exemption is granted under sect. 26 :

Refreshment-house keeper desiring to sell refreshments, &c. on his premises for the accommodation of markets, &c.

5. A licensed refreshment-house keeper in the metropolis, or in those places outside which have adopted the Public House Closing Act, 1864, desiring to sell refreshments or non-intoxicating liquors on *his licensed* premises between the hours of two and four in the morning for the accommodation of persons attending a public market, *or* engaged in certain trades during the night, must obtain an *exemption* licence either under 35 & 36 Vict. c. 94, s. 26, *ante*, pp. 144, 145, *or* 28 & 29 Vict. c. 77, s. 2 (*ante*, pp. 242, 243)—if under sect. 26 and the premises are in the metropolis, from the police authorities ; if outside, from two justices in petty sessions ;—if under 28 & 29 Vict. c. 77, s. 2, whether in or out of the metropolis, from the licensing justices at the annual licensing meeting or adjournment (see *ante*, p. 242). Of course, no additional excise licence is re-

quired when the exemption is granted under sect. 26.

6. Any person licensed to sell beer or cider by retail, to be consumed *on* the premises, may, under 37 & 38 Vict. c. 49, s. 5 (see *ante*, p. 146), obtain an order of exemption similar to one granted to a licensed victualler or licensed keeper of a refreshment-house under sect. 26.

Lastly. It will appear from the above summary that if the sale is to be *on* the licensed premises, the exemption order is granted by the local authorities only;—if *away* from such premises, both a justices' certificate and an excise licence are necessary.

Occasional Licence to Alehouse keepers only to sell at another Place for not exceeding Three Days.]

The 25 & 26 Vict. c. 22, s. 13, enacts,—“It shall be lawful for the commissioners of inland revenue, whenever they shall consider it conducive to public convenience, comfort and order, and with the consents in writing of two justices [now *one* justice, see 26 & 27 Vict. c. 33, s. 20, p. 272] of the peace usually acting at the petty sessions for the petty sessional division within which the place of sale is situate, to authorize any officer of excise to grant to any person who shall be duly authorized to keep a *common inn, alehouse, or victualling-house*, and who shall have taken out the proper excise licences to sell therein beer, spirits, wine, *or* tobacco, an occasional licence under this act empowering him to sell the like articles for which he shall have taken out such licences as aforesaid *at any such other place*, and for and during such space or period of time, not exceeding three consecutive days at any one time (*a*) as the said commissioners shall

Occasional licence to alehouse keepers only to sell at another place for not exceeding three days on consent of justices.

25 & 26 Vict. c. 22, s. 13, amended by 26 & 27 Vict. c. 33, s. 20.

25 & 26 Vict.
c. 22, s. 13.

Provisions.

approve, and as shall be specified in such occasional licence;—and any person who shall have taken out such occasional licence shall not be liable to any penalty or forfeiture whatever by reason or on account of his selling the articles mentioned in the said licence during the time and at the place specified therein;—provided that no such occasional licence shall authorize the sale of any beer, spirits, or wine, except during the hours after sunrise and before ten o'clock at night [to be limited by the justice granting the licence, 37 & 38 Vict. c. 49, s. 19, *infra*],—and provided that the said licence shall not protect any such person in the sale of any of the articles herein mentioned, unless he shall at the time of such sale produce such licence when requested to do so by any officer of excise, or by any constable or police officer;—nor shall any such licence be granted for the sale of any of the articles herein mentioned on any Sunday, Christmas Day, or Good Friday, or on any day appointed for a public fast or thanksgiving

.”

Alteration by
26 & 27 Vict.
c. 33, s. 20:

By 26 & 27 Vict. c. 33, s. 20, amended by 37 & 38 Vict. c. 49, s. 19, the above provisions are materially altered;—it recites that “it is expedient to alter and amend the conditions and restrictions upon and under which occasional licences to sell beer, spirits, or wine may be granted and used, as provided by the 13th section of the act 25 & 26 Vict. c. 22,” and enacts as follows:

—one justice
only neces-
sary;

—hours of
sale;
Ib.

Occasional
licences,—
extension of

- “1. That the consent of *one* justice of the peace, as in the said section mentioned, only, shall be necessary:
2. That the hours during which such occasional licence shall authorize the sale of any beer, spirits, or wine shall extend from [such hour not earlier than sunrise until such hour not later than ten o'clock at night as may be

specified in that behalf in the consent given by the justice for the granting of such occasional licence]:—

time for closing.
37 & 38 Vict.
c. 49, s. 19.

3. That upon the occasion of *any public dinner or ball* it shall be lawful for the person who shall have obtained an occasional licence under the provisions of the said act to sell the said liquors during such hours before or after sunrise or sunset as shall be allowed and specified in that behalf in the consent to be given by the justice of the peace for the granting of such occasional licence."

—hours of sale at public dinners or balls.

25 & 26 Vict.
c. 22, s. 18.

Vide the form of the justice's certificate consenting to the grant of an occasional licence furnished by the excise, No. 65, *post*, p. 275.

(a) By a regulation of the inland revenue commissioners a licence must be taken out for each house, tent, or booth, if more than one is used; and if the sale is to continue for more than six successive days, the further consent of a justice is required, and another occasional licence taken out for the additional period, not exceeding six days at a time, during which the occasion may last (see 26 & 27 Vict. c. 33, s. 19).

Occasional Licence to Refreshment-House and Beerhouse Keepers and Retailers of Wine to sell at another Place for not exceeding Three Days.]

The 27 & 28 Vict. c. 18, s. 5, enacts, "It shall be lawful for the commissioners of inland revenue, whenever they shall consider it necessary for the accommodation of the public, to authorize any officer of excise to grant (upon payment of the respective duties in that behalf mentioned in Schedule (B.) to this act) an occasional licence in the several and respective cases hereinafter mentioned; (that is to say) to any person who shall have taken out an excise licence under the 23 Vict. c. 27, to keep a refreshment-house, *or* to sell by retail in a refreshment-house foreign wine to be consumed therein; *or* an excise licence under the 4 & 5 Will. 4, c. 85, to retail beer to be drunk *or*

Occasional licences to refreshment-house and beerhouse keepers and retailers of wine to sell at another place for not exceeding three days on consent of a justice.

27 & 28 Vict.
c. 18, s. 5.

27 & 28 Vict.
c. 18, s. 5.

consumed in or upon the house or premises where sold; *or* an excise licence under the 6 Geo. 4, c. 81, to deal in or sell tobacco . . . and every such occasional licence shall authorize any such person as aforesaid to exercise and carry on the same trade and business as he shall be authorized to carry on by virtue of the licence granted under the said acts respectively as aforesaid at *any such place (other than the place for which his original licence was granted)*, and for and during such space or period of time, not exceeding three consecutive days at any one time, as the commissioners shall approve, and as shall be specified in such occasional licence;—provided that the said occasional licence shall not protect any such person in the carrying on of any such trade or business as aforesaid, unless he shall produce such licence whenever requested so to do by any officer of excise, *or* by any constable or police officer, at the time of exercising such trade or business;—and provided also, that the conditions and restrictions contained in the 20th section of the 26 & 27 Vict. c. 33 [see that section, *ante*, p. 272], relating to occasional licences, shall apply to the occasional licences to be granted under this act (except in the case of occasional licences to sell tobacco . . .).”

Provisoes.

26 & 27 Vict.
c. 33, s. 20,
applicable.

Occasional
licences,—
extension of
time for
closing.

27 & 28 Vict.
c. 49, s. 19.

Whereas by the twentieth section of the act of the session of the twenty-sixth and twenty-seventh years of the reign of her present Majesty, chapter thirty-three, it is provided that the hours during which an occasional licence shall authorize the sale of any beer, spirits, or wine shall extend from sunrise until one hour after sunset: Be it enacted, that the said section shall be construed as if in place of the words “sunrise until one hour after sunset” there were inserted the words “such hour not earlier than sunrise until such hour not

later than ten o'clock at night as may be specified in that behalf in the consent given by the justice for the granting of such occasional licence."

The form *infra* is applicable to this enactment also.

Further, as to occasional licences, see 37 & 38 Vict. c. 49, s. 18, *post*, p. 283; *Ib.* s. 19, *supra*; and *Ib.* s. 20, *supra*, p. 164.

As far as sections 12—18, relating to offences against public order, of the Act of 1872, and the sections for giving effect to the same are concerned, a person taking out an occasional licence shall be deemed a licensed person within the meaning of those sections, and the place where intoxicating liquors are sold in pursuance of such licence shall be deemed to be licensed premises, and to be premises of the person taking out such licence.

37 & 38 Vict.
c. 49, s. 20.

FORM.

I, the undersigned, being a justice of the peace usually acting at the petty sessions for the petty sessional division in which the place of sale hereinafter mentioned is situated, do consent to an occasional licence for the sale of beer [*or spirits, or wine, or refreshments*] on the* day of 187 , at on the occasion of † being granted to A. B., he being duly licensed to sell the above-named articles.

(55) Justice's consent to grant of occasional licence by the exercise (a).
(26 & 26 Vict. c. 22, s. 18; 27 & 28 Vict. c. 18, s. 5.)

Given under my hand this day of 187 .
J. S.

(a) This form, with the explanatory notes, is furnished by the inland revenue officer to any licensed person requiring an occasional licence.

* Insert the day or days for which the consent is given; in the case of a licensed victualler it must not exceed six days; for other traders it must not exceed three days.

† Insert the occasion to which the consent applies, as "an agricultural show," "public races," "a fair," "a cricket match," or according to the fact. On the occasion of a public dinner or ball only, the justice may authorize the sale of the above-named articles during such hours (before or after sunrise or sunset) as he may think proper, and in such cases the hours must be inserted in the above consent. A licensed victualler requires an occasional licence from the excise to enable him to sell at public fairs or races, 37 & 38 Vict. c. 49, s. 18, *post*, p. 283.

No occasional licence granted to a licensed victualler or keeper of a refreshment house for the sale of the articles in which he deals, will authorize him to sell such articles in the localities hereinafter mentioned between the hours of one and four in the morning, unless such licensed victualler, or refreshment-house keeper, shall have obtained, in addition to the above consent of a justice, an authority to sell during those hours from the commissioners of police in the metropolitan police district, from the commissioner of the city police in the city of London, and from the superintendent or other chief officer of police in any borough or district of improvement commissioners in which the provisions of the act 37 & 28 Vict. c. 64, shall have been adopted.

CHAPTER XVIII.

MISCELLANEOUS LICENCES GRANTED BY JUSTICES, AND OTHER MATTERS.

Occasional
licences, &c.
in Chap.
XVII.

THE acts as to the grant of occasional licences are given in Chapter XVII., in the preliminary observations to which is given a summary of them and other provisions relating to exemptions, orders, and licences, showing how such licences and exemptions are obtained in every case (*ante*, pp. 268—271).

This Chapter contains, amongst others, the matters excepted from the Licensing Act, 1872, by sect. 72, subsects. 4, 5, and 7, *ante*, p. 21.

Licences of
canteens for
troops.

Licences of Canteens.] The Annual Army Mutiny Act enacts,—“When any person shall hold any canteen under proper authority of the War Department, it shall be lawful for any two justices within their respective jurisdictions to grant or transfer any beer, wine, or spirit licence to such persons without regard to time of year or to the notices or certificates required by any act in respect of such licences ;—and the commissioners of excise, or their proper officers within their respective districts, shall also grant such licences as aforesaid ;—and such persons so holding canteens, and having such licences, may sell therein victuals and exciseable liquors, as empowered by such excise licence, without being subject to any penalty or forfeiture.”

A canteen should be one established with the authority of the Secretary of State for War, and any tenant of a canteen should

either be appointed by the Secretary of State, or be subject to his approval. All applications should be addressed through the general officer commanding the district. Canteens are exempted from having soldiers billeted upon them.

The Annual Marine Mutiny Act enacts,—“It shall be lawful for any two justices of the peace, within their respective jurisdictions, to grant or transfer any licence for selling by retail any spirit, beer, wine, cider, or perry to any person or persons applying for the same who shall hold any canteen under any lease thereof, or by agreement with any department or other authority under the said Lord High Admiral, or the commissioners for executing the office of Lord High Admiral for the time being, without regard to the time of year, or any notices or certificates required by any act in respect of such licences;—and the commissioners of excise or their proper officers within their respective districts shall also grant or transfer any such licence as aforesaid;—and such persons holding such canteens, and having such licences as aforesaid, may sell therein victuals, and all such exciseable liquors as they shall be licensed and empowered to sell, without being subject for so doing to any penalty or forfeiture whatever.”

Licence of canteens for marine forces.

Billeting Troops and Marines.] The Annual Army Mutiny Act contains various regulations as to the manner of billeting soldiers and their horses, and the allowance to be made to innholders and others, which are too lengthy to be inserted here; and penalties of not less than 2*l.*, nor more than 5*l.* is imposed on innholders and others refusing to receive or properly to accommodate the soldiers or horses. The powers and regulations as to billets are to “extend and apply to all inns, hotels, livery stables, alehouses, and to the

Billeting of troops.

—at inns,
beerhouses,
&c.

houses of *sellers of wine* by retail, whether *British or foreign* [and beer, 4 & 5 Will. 4, c. 85, s. 5], to be drunk in their own houses, or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider or metheglin by retail."

Exemptions:

—canteens;

"Provided that no officer or soldier shall be billeted in Great Britain in any private houses, or in any canteen held or occupied under the authority of the War

—vintners of
City of
London;

Department,—*or* upon persons who keep taverns only, being vintners of the city of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding such persons who keep such taverns only have taken out victualling licences,

—distillers,
shopkeepers,
or foreign
consul.

—nor in the house of any distiller kept for distilling brandy and strong waters, nor in the house of any shopkeeper whose principal dealing shall be more in other goods and merchandize than in brandy and strong waters, so as such distillers and shopkeepers do not permit tippling in such houses,—nor in the house of residence in any part of the United Kingdom of any foreign consul duly accredited as such."

Billeting of
marines.

The Marine Mutiny Act also contain provisions for billeting the royal marine forces when on shore.

Music and
dancing
licences in
metropolitan
police district,
25 Geo. 2,
c. 36, s. 2.

Music and Dancing Licences in Metropolitan Police District.] Licensed victuallers, or other licensed persons, or others, "in the cities of London and Westminster, *or* within twenty miles thereof," desiring a licence "for any house, room, garden *or* other place kept for public dancing, music, *or* other public entertainment of the like kind," must obtain such licence from the justices at the Michaelmas court of quarter sessions only, and not at an adjourned sessions, held for the jurisdiction in which the house, room, garden or other place is situate, to which the

licence is proposed to be attached (25 Geo. 2, c. 36, s. 2)(a). No fee is payable for the licence. If a person keeps any of such places for either of those purposes without a licence, he is liable to a penalty of 100*l.*, to be sued for; and also to be indicted and punished like persons keeping disorderly houses (sect. 2). Constables may enter the premises (*Id.*) The person licensed is to have inscribed over his door in large capital letters the words "Licensed pursuant to act of parliament of the twenty-fifth of King George the Second." Not doing so or for any breach of the conditions of the licence it is forfeited, and a new one cannot be obtained (sect. 3).

25 Geo. 2,
c. 36, s. 2.

Music and
dancing li-
cences in
metropolitan
police dis-
trict.

(a) He must have a separate licence for each entertainment, or the one granted must include the three. Therefore, if he have a licence for "public music" and allow "public dancing," he is liable to the penalties of keeping his house without a licence (*Brown v. Nugent, infra*).

House kept for Public Dancing, Music or other Public Entertainment—Licence for Music only—25 Geo. 2, c. 36, ss. 2, 3.]—Under sect. 2, which empowers justices to license a house for public dancing, music or other public entertainment of a like kind, the justices have a discretion to grant a licence for one of the purposes only, viz., music; and the keeper of a house with a music licence only is liable to the penalty for keeping a house without a licence, if he permit public dancing in the house. Sect. 3 refers to house, &c., "kept for any of the said purposes." Decision of Q. B. affirmed by Ex. Ch. (*Brown v. Nugent, L. R., 7 Q. B., Ex. Ch. 588; 26 L. T., N. S. 880; 41 L. J., Q. B. 304; M. C. 166.*)

Music—Other Public Entertainments of like kind—House "kept" for, &c.—Licence—Performance on one day only in the Year—Penalty—25 Geo. 2, c. 36, s. 2.]—A house is not "kept for public dancing or other public entertainment of the like kind" within the meaning of sect. 2 of 25 Geo. 2, c. 36, if a concert to which the public are admitted is given on one day only in the year, though the house may be used on other days in the year for dramatic entertainments under a licence

from the lord chamberlain. The Grecian Theatre was licensed by the lord chamberlain, Good Friday and Ash Wednesday excepted, concert given on latter day (*Syers v. Conquest*, 28 L. T., N. S. 402; 21 W. R. 524).

Application
for licence.

The several courts of quarter sessions have made orders as to the granting of these licences : those made for the city of London are :—

—orders in
the city of
London.

No. 1.—Ordered, That all persons intending to apply for licences for music, dancing, or other public entertainments of the like kind, under statute 25 Geo. 2, c. 36 (except the parties mentioned in Order No. 4), shall give one month's notice at the least, previously to the commencement of the Michaelmas quarter sessions for the city of London, to the alderman of the ward in which the premises are situate; to the clerk of the peace for the said city, at his office in the Sessions House, Old Bailey; to the clerk of the special sessions, at the Guildhall; and to the acting inspector at the police station of the district in which such premises are situate, of their intended application; and shall also, one month at the least before the commencement of such session, cause a notice, in the under-mentioned form, to be affixed upon the outer door or other conspicuous part of the premises sought to be licensed.

Form of Notice.

(66) Notice
of application
for a music
or dancing
licence.

I, A. B., of, &c., do hereby give notice, that I intend to apply, under the provisions of the statute 25 Geo. 2, c. 36, at the next Michaelmas Quarter Sessions for the city of London, to be holden at the Guildhall in the said city, on the day of October, 187 , for a licence [*here insert the particular sort or sorts of public entertainment for which the licence is required*], to be carried on within the house or premises situate at [*or known by the name of " ," as the case may be*], and now in the occupation of me the subscriber hereto. Dated the day of
187 .

No. 2.—Ordered, That every person presenting a petition against the grant or renewal of a licence, shall leave with the clerk of the peace, four clear days before the commencement of

the Michaelmas quarter session, a copy of such counter-petition, for the inspection of the party applying for such grant or renewal.

No. 3.—Ordered, That every applicant for a music or dancing licence be required to attend the court personally, unless a reason satisfactory to the court shall be assigned for his absence.

No. 4.—Ordered, That in every case, when any person having a music or dancing licence shall transfer his premises to any other person, such incoming tenant shall be required to give fourteen days' notice, instead of the one month's notice required by Order No. 1.

The orders in force in Middlesex and Surrey are very similar, differing principally as to the length of 'notice of application ; Middlesex requiring two months' notice,—and one month for a transfer ; Surrey twenty days' notice for a transfer. In Kent, notice for a new licence or renewal must be given to the clerk of the peace on or before 20th September, and every application must be recommended by two or more justices of the division where house situated.

Orders in
Middlesex,
Surrey, and
Kent.

Sale of Liquors at Theatres.] The 5 & 6 Will. 4, c. 39, s. 7, enacts,—“ It shall be lawful for the commissioners and officers of excise, and they are hereby authorized and empowered, to grant retail licences to any person to sell beer, spirits and wine in any theatre established under a royal patent, *or* in any theatre *or* other place of public entertainment licensed by the lord chamberlain *or* by justices of the peace, without the production by the person applying for such licence or licences of any certificate or authority for such person to keep a common inn, alehouse or victualling house ; anything in any act or acts to the contrary notwithstanding.”

Sale of
liquors at
theatres.
5 & 6 Will. 4,
c. 39, s. 7.

The theatre licence is granted under the 6 & 7 Vict.

c. 68. See Oke's "Synopsis," 11th ed., vol. ii., pp. 1168, 1169.

2 & 3 Vict.
c. 47, s. 46.

The Metropolitan Police Act (2 & 3 Vict. c. 47, s. 46), authorizes a superintendent of the metropolitan police, deputed by the commissioners, to enter unlicensed theatres and take into custody the persons found therein, who are liable to a penalty of 40s., and the keeper to be indicted for keeping a disorderly house. A similar power is given in the City Police Act (2 & 3 Vict. c. xciv. s. 30).

2 & 3 Vict.
c. xciv. s. 30.

Licence for
packet boats
or vessels.

9 Geo. 4, c. 47;
4 & 5 Will. 4,
c. 75.

Licence for Packet Boats or Vessels.] The acts regulating the granting of these licences are,—9 Geo. 4, c. 47, and 4 & 5 Will. 4, c. 75. The licences are granted by the excise for the sale of exciseable liquors and tobacco to passengers on board any packet boat or other vessel conveying persons from one part of the United Kingdom to another, to the master or commander of such vessel, or to a person nominated by the owner or directors upon a certificate or declaration from him or them affirming such nomination; which licences may be transferred by indorsement by the holders to other masters, &c. of the same vessel (9 Geo. 4, c. 47, s. 1; 4 & 5 Will. 4, c. 75, s. 10). The penalty for selling without licence is 10*l.* (9 Geo. 4, c. 47, s. 3). Neither in the grant nor the transfer is any authority required from justices.

—in metro-
politan
police
district.

The 5 & 6 Vict. c. 44, s. 5, enacts penalties for the sale of wine, spirits, or other exciseable liquors on board boats moored or lying at anchor within the metropolitan police district, during the time, on Sundays, Good Friday and Christmas Day, when prohibited to be sold in public-houses.

Sale of
liquors, &c.
at fairs or
races.

Sale of Liquors, &c. at Fairs or Races.] The course of legislation upon the sale of liquors at fairs

and races has been very capricious. The 6 Geo. 4, c. 81, s. 11, allowed licensed persons to sell beer, wine or spirits at fairs and public races without the excise licences, which exemptions were confirmed by 24 & 25 Vict. c. 91, s. 13, not being repealed by 23 & 24 Vict. c. 113, s. 37, or 23 & 24 Vict. c. 114, s. 195. But by 25 & 26 Vict. c. 22, these were taken away, sect. 12 enacting that "so much of any act as permits the sale of beer, spirits or wine at fairs or races without an excise licence shall be and the same is hereby repealed." The 26 & 27 Vict. c. 33, s. 21, however, preserved the right to licensed persons. After reciting the 12th section of 25 & 26 Vict. c. 22, it enacted,—
"That from and after the passing of this act nothing in the last-recited enactment contained shall extend to prohibit any person duly licensed by the excise to retail beer, spirits, or wine, as in the eleventh section of the act 6 Geo. 4, c. 81, is mentioned, from carrying on his trade or business for which he shall be so licensed in booths, tents, or other places at the time and place and within the limits of holding any lawful and accustomed fair by virtue of any law or statute in that behalf, or any public races, in like manner as such person might lawfully have done under the said last-mentioned act, if the said act of the last session of parliament had not been passed."

But now, by the Licensing Act, 1874, any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races without an occasional licence authorizing such sale shall, notwithstanding anything contained in any act of parliament to the contrary, be deemed to be a person selling or exposing for sale by retail intoxicating liquor at a place where he is not authorized

Occasional
licence re-
quired at
fairs and
races.

37 & 38 Vict.
c. 49, s. 18.

37 & 38 Vict. c. 49, s. 18. by his licence to sell the same, and be punishable accordingly.

Provided that this section shall not apply to any person selling or exposing for sale intoxicating liquors in premises in which he is duly authorized to sell the same throughout the year, although such premises are situate within the limits aforesaid.

See an analysis of the enactments under which the licences and certificates are granted, in Chap. XVII., *ante*, pp. 268—271.

Alehouse Licence—Selling Beer at Fair—Non-necessity of Occasional Licence—Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 3, 72.—An alehouse keeper, who has obtained an ordinary justices' and excise licence, may, by virtue of such licence, sell beer in booths at any lawful fair. It is not necessary to get a special licence for that purpose (*Heyward v. Holland*, 28 L. T., N. S. 702; 21 W. R. 920). This will now, however, only be the case where the premises, being licensed for the year, are within the limits of holding the fair (or races), 37 & 38 Vict. c. 49, s. 18, *supra*.

Stage Play—"Place"—6 & 7 Vict. c. 68, s. 11.—A temporary booth is a "place" within the section (*Turling v. Fredericks*, 28 L. T. 814).

Abolition of fairs.

Fairs held out of the metropolitan police district may be abolished by an order from the Home Secretary under 34 Vict. c. 12; and unlawful fairs in that district by a police magistrate under 2 & 3 Vict. c. 47, s. 39, amended by 30 & 31 Vict. c. 134, s. 21. Further powers are given to a police magistrate by 31 & 32 Vict. c. 106.

Sale of liquors, &c. at fêtes, &c.

Sale at Fêtes, Shows, Matches, &c., Public Dinners or Balls, &c.] See Chap. XVII.

Act as to liability of innkeepers. 26 & 27 Vict. c. 41.

Act as to Liability of Innkeepers.] The 26 & 27 Vict. c. 41 (passed 13th July, 1863), "An Act to amend the Law respecting the Liability of Innkeepers, and to prevent certain Frauds upon them," after reciting that "it is expedient to amend the law concerning the liability of innkeepers in respect of the goods of their guests in manner hereinafter mentioned," enacts,—

Sect. 1. "No innkeeper shall, after the passing of this act, be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn (*a*), not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of thirty pounds, except in the following cases; (that is to say,)

26 & 27 Vict.
c. 41.

Innkeeper not to be liable for loss, &c. beyond 30*l.*, except in certain cases.

Sect. 1.

- (1.) Where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ:
- (2.) Where such goods or property shall have been deposited expressly for safe custody with such innkeeper:

Provided always, that in the case of such deposit it shall be lawful for such innkeeper, if he think fit, to require, as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same."

Sect. 2. "If any innkeeper shall refuse to receive for safe custody, as before mentioned, any goods or property of his guest, or if any such guest shall, through any default of such innkeeper, be unable to deposit such goods or property as aforesaid, such innkeeper shall not be entitled to the benefit of this act in respect of such goods or property."

Obligation to receive property of guests for safe custody.

Sect. 2.

Sect. 3. "Every innkeeper shall cause at least one copy of the first section of this act, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to his inn, and he shall be entitled to the benefit of this act in respect of such goods or property only as shall be brought to his inn while such copy shall be so exhibited."

Notice of law, &c. to be conspicuously exhibited.

Sect. 3.

26 & 27 Vict.
c. 41.

Interpreta-
tion of
terms.

Sect. 4.

(a) By sect. 4, "the words and expressions hereinafter contained, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; that is to say,—the word 'inn' shall mean any hotel, inn, tavern, public-house, or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guest; and the word 'innkeeper' shall mean the keeper of any such place."

Goods belonging to a third Person—What Goods subject to Lien.—B. went to defendant's hotel taking as his own a piano which he had hired of plaintiff. B. having remained at the hotel several weeks, left in debt for board and lodging, and defendant claimed to detain the piano as against plaintiff in exercise of his lien as innkeeper :—Held, that as defendant had received the piano as part of the goods of his guest, he had a lien upon it (*Threlfall v. Borwick*, 41 L. J., Q. B. 266; L. R., 7 Q. B. 711; 26 L. T., N. S. 794).

Innkeeper—Hotel Company—Holder of Licence.—Plaintiff having lost his goods at an hotel of which a company were proprietors, sought to recover value in action against the paid manager in whose name the justices' licence had been granted :—Held, that the company were the real innkeepers, and therefore action was not maintainable. *Martin, B.*: There is nothing in the Licensing Acts which prevents it from being shown that the real "innkeeper" is not the person licensed but some one else (*Dixon v. Birch*, 42 L. J. (N. S.) Ex. 135; L. R., 8 Exch. 135; 28 L. T., N. S. 360).

Innkeeper—Loss of Valuables—Negligence.—Where a guest at an inn has an opportunity given him of securing valuables in his possession by giving them over to custody of the innkeeper, or otherwise, and neglects such opportunity :—Held, that his conduct amounts to such negligence as to deprive him of his right to recover against the innkeeper in case of such valuables being lost or stolen (*Jones v. Jackson*, 29 L. T., N. S. 899).

Infectious Diseases in Inns.

If any person knowingly lets any house, room, or part of a house in which any person suffering from any dangerous infectious disorder has been to any other

penalty on
persons
letting
houses in
which in-

person without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner as testified by a certificate given by him, such person shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section the keeper of an inn shall be deemed to let part of a house to any person admitted as a guest into such inn.

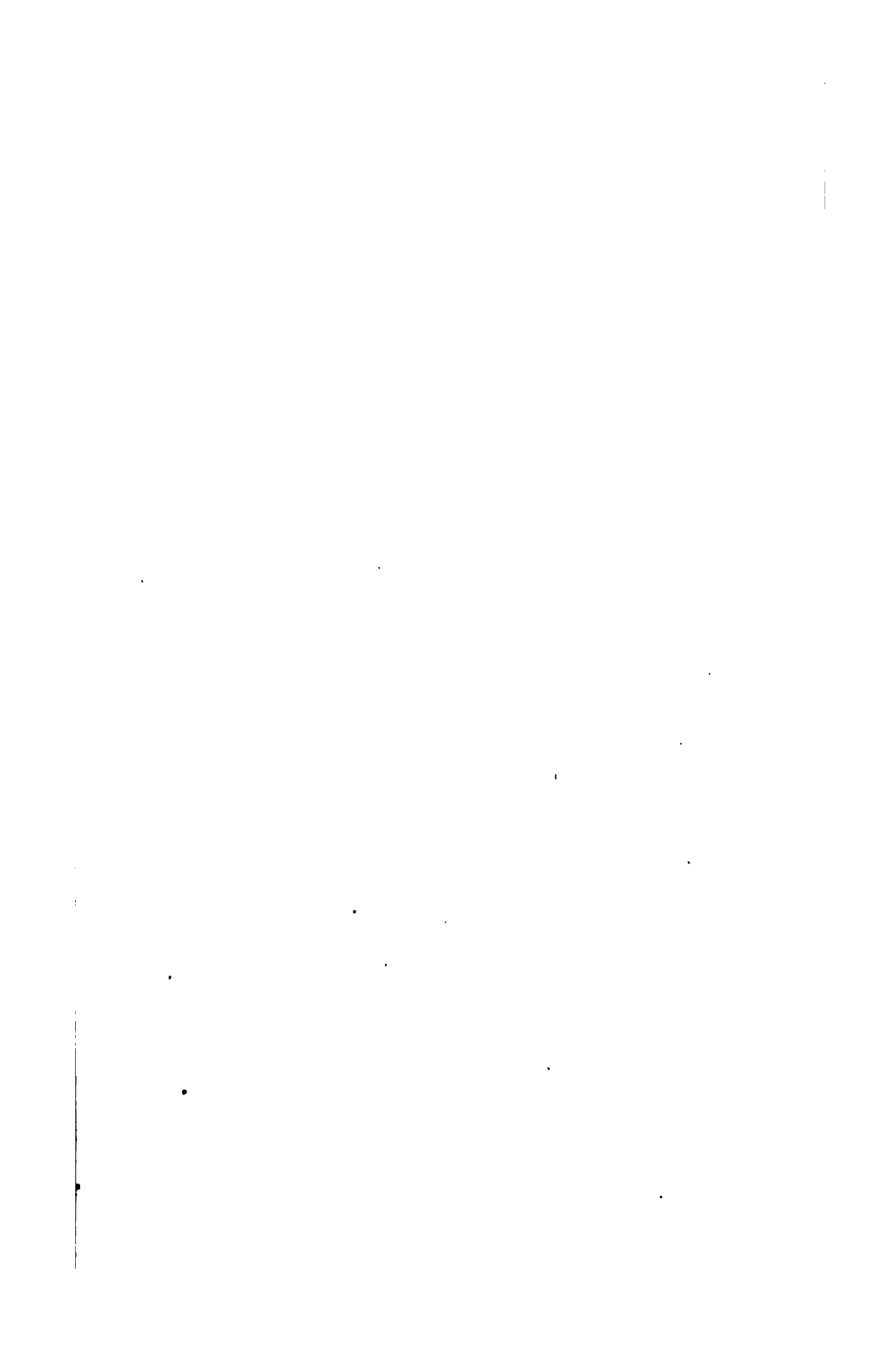
fectd persons have been lodging.
29 & 30 Vict.
c. 50, s. 39.

As to what is an "inn," see 9 Geo. 4, c. 61, s. 37, *ante*, p. 50. The above will not apply to a mere alehouse or beerhouse. Then there is no legal definition of the word "guest." It will be open to doubt, even if the house be an inn, whether persons frequenting it to obtain casual refreshment can be considered as doing so in the capacity of "guests" within the meaning of the statute. This latter word appears to apply to persons who obtain lodging in the inn, and not to those who only take casual refreshment thereat.

The following is the provision in the Sanitary Law Amendment Act, 1874, with regard to letting rooms in which persons suffering from infectious diseases have been living:—

If any owner or occupier or person employed to let for hire, or to show for the purposes of letting for hire, any house or part of a house, when questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being in such house, or having within six weeks previously been therein, any person suffering from an infectious, contagious, or epidemic disease, knowingly makes a false answer to such question, the person so answering falsely shall be guilty of an offence punishable on summary conviction, and, at the discretion of the justices having cognizance of the case, be liable to be imprisoned, with or without hard labour, for a period not exceeding one month, or to pay a penalty not exceeding twenty pounds.

Penalty on false representations with respect to infectious disease.
37 & 38 Vict.
c. 39, s. 56.



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APPENDIX I.

FORMS OF LICENCES, &c., *prescribed by the Secretary of State, pursuant to sect. 48, subs. 1, of the Licensing Act, 1872 (set out ante, p. 64).**

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I. *Form of Grant of a New Licence, and Confirmation of such Grant.*

Licensing Act, 1872.

At the General Annual Licensing Meeting [*or an adjournment of the General Annual Licensing Meeting*], holden at on the day of
187 , for the division of in the county of
[*or for the borough of*]:

(a.) We being of the justices acting for the said

* In the former edition Mr. Oke recommended that new licences be printed on the first page of a sheet of foolscap paper of a durable nature, so as to allow of the three other pages being used for indorsement of transfers, renewals, and records of convictions, disqualifications, &c., during the existence of the licences, as in ordinary cases they would endure for some years. The same observations apply to renewals and transfers when made by a separate instrument and not by indorsement. When effected by indorsement, the printed matter may be gummed to the original licence.

division, and being the majority of those at the said meeting assembled,

or,

(b.) We, being the majority of the members present of the borough licensing committee, appointed for the said borough in pursuance of the Licensing Act, 1872,

or,

(c.) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby grant unto A. B., of [here insert a licensed victualler, beerhouse keeper, coffee-house keeper, confectioner, eating-house keeper, licensed dealer in spirits, a refreshment-house keeper, a wholesale spirit dealer, the holder of a strong beer licence, *or as the case may be*], this licence authorizing him to apply for and hold

[Here insert A., or B., or C. . . . or L., as in the Appendix, pp. 296—298, as the case may be.]

The owner of the premises in respect of which this licence is granted is M. N. of .

This licence shall be in force from the day of until the day of .

Witness our hands.

[Signatures of Justices.]*

Confirmation.

At a meeting holden at on the day of ,

(a.) We, being the majority of members present of the county licensing committee, appointed for the said county in pursuance of the Licensing Act, 1872, do hereby confirm the grant of the above licence.

Witness our hands,*

or,

(b.) We, being of the justices of the said borough,

* NOTE.—A licence may be authenticated by an official seal in lieu of signatures, 55 & 56 Vict. c. 34, s. 40, subs. 3, applying 23 & 24 Vict. c. 39, s. 4, subs. 2. See ante, p. 65. In that case insert, instead of "Witness our hands"—"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, C. D., Clerk of the Licensing Justices," or as the case may be.

Appendix I.

and being the majority of those at the said meeting assembled, do hereby confirm the grant of the above licence.

Witness our hands,*

or,

(c.) We, being the majority of the members present of the joint committee, appointed for the said borough in pursuance of the Licensing Act, 1872, do hereby confirm the grant of the above licence.

Witness our hands.

[Signatures of Justices.]*

[Referred to
in No. 15,
ante, p. 106.]

**II. Form of Renewal of a Licence, 35 & 36 Vict.
c. 94, s. 74.**

Licensing Act, 1872.

At the General Annual Licensing Meeting [or an adjournment of the General Annual Licensing Meeting] holden at on the day of , for the division of in the county of [or, for the borough of]:

(a.) We, being of the justices acting for the said division, and being the majority of those at the said meeting assembled,

or,

(b.) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby grant unto *A. B.* of [here insert a licensed victualler, beerhouse keeper, coffee-house keeper, confectioner, eating-house keeper, licensed dealer in spirits, a refreshment-house keeper, a wholesale spirit dealer, the

* **NOTE.**—A Licence may be authenticated by an official seal in lieu of signatures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2. See ante, p. 65. In that case insert, instead of "Witness our hands"—"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, *C. D., Clerk of the Licensing Justices,*" or as the case may be.

holder of a strong beer licence, *or, as the case may be*], this renewal licence, authorizing him to apply for and hold

[*Here insert A., or B., or C. . . . or L., as in the Appendix, pp. 296—298, as the case may be.*]

The owner of the premises in respect of which this licence is granted is *M. N.* of .

This licence shall be in force from the day of , until the day of .

Witness our hands.

[*Signatures of Justices.*]*

III. *The same by way of Indorsement, 35 & 36 Vict. c. 94, s. 48 (2).*

[Referred to in No. 15, ante, p. 106.]

(*To be indorsed on the Licence, or on a copy thereof.*)

At the General Annual Licensing Meeting [*or an adjournment of the General Annual Licensing Meeting*] holden at on the day of , for the division of in the county of [*or for the borough of*]:

(a.) We, being of the justices acting for the said division, and being the majority of those at the said meeting assembled,

or

(b.) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby renew the licence within contained, and such licence as renewed shall be in force until the day of .

The owner of the premises in respect to which the licence is granted is *M. N.* of .

Witness our hands.

[*Signatures of Justices.*]*

* NOTE.—A licence may be authenticated by an official seal in lieu of signatures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2. See ante, p. 65. In that case insert, instead of "Witness our hands"—"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, C. D., Clerk of the Licensing Justices," or as the case may be.

[Referred to
in No. 20,
ante, p. 121.]

IV. *Form of Transfer Licence granted at Special Sessions, in pursuance of 9 Geo. 4, c. 61, s. 4.*

At a Special Sessions holden at on the day
of for the division of in the county
of [or, for the borough of]:

(a.) We, being of her Majesty's justices of the
peace acting in and for the said division, and being the
majority of those at the said sessions assembled,

or

(b.) We, being of the justices of the said borough,
and being the majority of those at the said meeting as-
sembled,

Hereby, pursuant to section 4 of the Intoxicating Liquor
Licensing Act, 1828, and the acts amending the same,
licence one *C. D.* of and transfer to him^o the licence
now held by *A. B.*, of [here insert a licensed victualler,
beerhouse keeper, coffee-house keeper, confectioner, eating-
house keeper, licensed dealer in spirits, a refreshment-
house keeper, a wholesale spirit dealer, the holder of a
strong beer licence, or as the case may be], and granted on
the day of last, authorizing him to hold

[Here insert *A.*, or *B.*, or *C.* . . . or *L.*, as in the *Ap-
pendix*, pp. 296—298, as the case may be.]

^o[If by indorsement, say from the asterisk^o the licence
within contained now held by the within-named *A. B.*]

And we hereby authorize the said *C. D.* to apply for and
hold [in the case of alehouses insert, any of the said excise
licences, as now held, as well as those which were not held
by the said *A. B.* :—in other cases insert, the said excise
licence so held by the said *A. B.*].

This transfer to be in force from this day until the .

Witness our hands.

[Signatures of Justices.]^o

* NOTE.—A licence may be authenticated by an official seal in lieu of signa-
tures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2.
See *ante*, p. 65. In that case insert, instead of "Witness our hands"—"Given
under the official seal of the said justices in sessions assembled, which seal is
hereto affixed in their presence by me, *C. D.*, Clerk of the Licensing Justices,"
or as the case may be.

V. *Form of Grant of Licence at Special Sessions,* [Referred to
in No. 21,
ante, p. 121.]
in pursuance of 9 Geo. 4, c. 61, s. 14.

At a Special Sessions holden at on the day
of , for the division of in the county
of [or for the borough of]:

(a.) We, being of the justices acting for the said
division, and being the majority of those at the said sessions
assembled,

or

(b.) We, being of the justices of the said borough,
and being the majority of those at the said sessions as-
sembled,

Hereby, pursuant to section 14 of the Intoxicating Liquor
Licensing Act, 1828, and the acts amending the same, grant
unto A. B. of [here insert a licensed victualler, beer-
house keeper, coffee-house keeper, confectioner, eating-
house keeper, licensed dealer in spirits, a refreshment-house
keeper, a wholesale spirit dealer, the holder of a strong
beer licence, or as the case may be], this licence authorizing
him to apply for and hold

[Here insert A., or B., or C. . . . or L., as in the
Appendix, pp. 296—298, as the case may be.]

The owner of the premises in respect of which this licence
is granted is M. N. of .

This licence shall be in force from the day of
until the day of .

Witness our hands.

[Signatures of Justices.]°

* NOTE.—A licence may be authenticated by an official seal in lieu of signa-
tures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2.
See ante, p. 65. In that case insert, instead of "Witness our hands"—"Given
under the official seal of the said justices in sessions assembled, which seal is
hereto affixed in their presence by me, C. D., Clerk of the Licensing Justices,"
or as the case may be.

**APPENDIX containing descriptions of the several
Licences (for insertion in the previous skeleton
Forms).**

A.

Alehouse
licence (a).

Any of the excise licences that may be held by a publican for the sale by retail, at a house situated at _____, known by the sign of the _____, of intoxicating liquor, to be consumed either on or off the premises.

If the licence be a six-day licence, add as a separate paragraph :

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

B.

Beerhouse
licence
(off) (b).

An excise licence to sell by retail at a house situated at _____ beer to be consumed off the premises, in pursuance of the act 11 Geo. 4 & 1 Will. 4, c. 64, and acts amending the same.

C.

Beerhouse
licence (on
or off) (c).

An excise licence to sell by retail at a house situated at _____ beer to be consumed either on or off the premises, in pursuance of the act 11 Geo. 4 & 1 Will. 4, c. 64, and acts amending the same.

If the licence be a six-day licence, add as a separate paragraph :

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

D.

Cider and
perry licence
(on or off) (d).

An excise licence to sell by retail at a house situated at _____ cider and perry, to be consumed either on or off

(a) Referred to *ante*, p. 70, Form of Licence No. 6.

(b) *Ibid.*

(c) Referred to *ante*, p. 80, Form of Licence No. 8.

(d) *Ibid.*

the premises, in pursuance of the act 11 Geo. 4 & 1 Will. 4, c. 64, and acts amending the same.

If the licence is a six-day licence, add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

E.

An additional excise licence to sell by retail at a house situated at beer, to be consumed off the premises, in pursuance of the act 26 & 27 Vict. c. 33, s. 1.

Additional licence to strong beer dealers (e).

F.

An excise licence to sell by retail at a house situated at table beer, to be consumed off the premises, in pursuance of the act 24 & 25 Vict. c. 21, s. 3.

Table beer licence (f).

G.

An excise licence to sell by retail at a shop situated at wine, to be consumed off the premises, in pursuance of the act 23 Vict. c. 27, s. 3, and acts amending the same.

Winehouse licence to shops (g).

H.

An excise licence to sell by retail at a house situated at wine, to be consumed either on or off the premises, in pursuance of the act 23 Vict. c. 27, ss. 7, 8, and acts amending the same.

Licence for wine to a refreshment-house, confectioner or eating-house keeper. (h).

If the licence is a six-day licence, add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

(e) Referred to *ante*, p. 80, Form of Licence No. 8.

(f) *Ibid.*

(g) *Ibid.*

(h) Referred to *ante*, p. 80, Form of Licence No. 8, and No. 10, p. 84.

I.

A licensed
dealer's ad-
ditional spirit
licence (i).

An additional excise licence to sell by retail at a shop situated at spirits, to be consumed off the premises, in pursuance of the act 24 & 25 Vict. c. 21, s. 2.

K.

Licence for
liqueurs in
shops (j).

An excise licence to sell by retail at a shop situated at liqueurs, to be consumed off the premises, in pursuance of the acts 11 & 12 Vict. c. 121, and 23 & 24 Vict. c. 114, and acts amending the same.

L.

Licence for
sweets (k).

An excise licence to sell by retail at a house situated at sweets, to be consumed either on or off the premises, in pursuance of the act 6 Geo. 4, c. 81, and acts amending the same.

If the licence is a six-day licence, add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

(i) Referred to *ante*, p. 84, Form of Licence No. 10.

(j) *Ibid.*

(k) *Ibid.*

APPENDIX II.

ACTS PASSED PREVIOUSLY TO THE LICENSING ACT, 1874 (37 & 38 Vict. c. 49), *showing how they have been dealt with by subsequent legislation, and where the enactments in force are set out or referred to in the body of the work.*

* * The Acts 21 James 1, c. 7 to 34 & 35 Vict. c. 88, are those named in the Schedule of Acts repealed contained in the Licensing Act, 1872, and amended in other parts of that Act. This Table shows—1st. The enactments in order as they occur in the original Acts; 2nd. If any enactments have been repealed or amended, by what Act or section that has been done; 3rd. Where the enactments remaining in force are set out in the body of the work.

The contents of the Licensing Acts, 1872, 1874, are specially given and indexed in another Table, and so are other statutes and sections in force or referred to in the work.

21 James 1, c. 7—“An Act for the better repress-^{21 James 1, c. 7.}ing of Drunkenness and restraining the inordinate haunting of Inns, Alehouses and other Victualling-houses.”* [A.D. 1623-4.]

So much as is unrepealed is repealed by the 35 & 36 Vict. c. 94. [Sect. 4 was practically the only provision in force which authorized one justice to convict for drunkenness and to fine the offender 5s. and place him in the stocks in default of payment.]

9 Geo. 4, c. 61—“An Act to regulate the grant-^{9 Geo. 4, c. 61.}ing of Licences to Keepers of Inns, Alehouses and Victualling-houses in England.” [15th July, 1828.]

Sect. 1. General Licensing Meetings to be held annually.
Time of holding such Meetings 51

* The title of this Act is given in the 1st Vol. of the Revised Edition of the Statutes, p. 699, published 1870, as “An Acte for repressing of drunkennesse.”

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7. When in Liberties, &c. two Justices not disqualified do not attend, the County Justices may act	55
8. Powers hereby given to the Justices of the County not to extend to the Cinque Ports	56
9. Questions respecting Licences to be determined, and Licences to be signed by the majority of Justices at the Meeting	57
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12. Any person hindered from attending any Licensing Meeting by sickness may authorize another person to attend for him	62
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18. [Penalty for selling Exciseable Liquors by retail without Licence. Proviso in case of death]	
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21. [Penalties for offences against tenor of Licences]	
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Sect. 22. [Proceedings at the Session in certain cases to be carried on by the Petty Constable]	35 & 36	<i>Repealed by 35 & 36 Vict. c. 94.</i>
23. [Penalty on Witnesses not attending]..	35	
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26. [How Penalties are to be applied] ..	35 & 36	<i>Repealed by 35 & 36 Vict. c. 94.</i>
27. [Appeal may be made to the Quarter Sessions. Judgment of the Quarter Sessions to be final. <i>Repealed by 35 & 36 Vict. c. 94, except in so far as it relates to the renewal of Licences or to the transfer of Licences, under sects. 4 and 14 of the Act, p. 122.</i>]		
28. [Justices to bind parties to appear to give evidence at Quarter Sessions. <i>The same repeal, p. 124.</i>]		
29. [Court to adjudge Costs in certain cases. <i>The same repeal, p. 125.</i>]		
30. Actions against Justices, &c.	38	
31. [Conviction to be on oath of Witnesses.]		
32. [Form of Conviction]		
33. [Convictions to be returned to the Quarter Sessions and filed of record] ..	35 & 36	<i>Repealed by 35 & 36 Vict. c. 94.</i>
34. [Writ of Certiorari not to be allowed]..		
35. [Repealed various Acts from 5 & 6 Edw. 6, c. 25, to 4 Geo. 4.]		
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11 Geo. 4 & 1 Will. 4, c. 64 — "An Act to permit the general Sale of Beer and Cyder by retail in England." [23rd July, 1830.] 11 Geo. 4 & 1 Will. 4, c. 64.

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11 Geo. 4 & 1 Will. 4, c. 64.	Sect. 2. Parties desirous of retailing Beer shall take out a Licence. [<i>Repealed as to time of application by 32 & 33 Vict. c. 27, s. 21</i>]	PAGE 72
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	4. [Party requiring Licence shall enter into a Bond, with Sureties, for payment of Penalties. <i>Repealed by 30 & 31 Vict. c. 90, s. 13.</i>]	
	5. [No Person licensed to sell Beer shall be competent to be a Surety. <i>The same repeal.</i>]	
	6. [Persons licensed to retail Beer shall put up descriptive Boards. <i>Repealed by 35 & 36 Vict. c. 94.</i>]	
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	12. [Standard Measures to be used]	
	13. [Penalty on Retailers permitting Drunkenness, &c., in their Houses]	
	14. [Retailers' Houses shall not be open before 4 in the morning nor after 10 in the evening; nor on Sundays between 10 and 1, or 3 and 5 in the day. <i>Repealed by 3 & 4 Vict. c. 61, s. 14.</i>]	
	15. [Penalties recoverable before two Justices in Petty Sessions, within 3 months after offence committed]	} <i>Repealed by 35 & 36 Vict. c. 94.</i>
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22. [Application of Penalties]	Vict. c. 94.	c. 64.
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29. Act not to affect the two Universities, nor the Vintners' Company in London; nor to prohibit the sale of Beer at Fairs as heretofore	21	
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4 & 5 Will. 4, c. 85—"An Act to amend an Act passed in the First year of his present Majesty, to permit the general Sale of Beer and Cyder by retail in England." [15th August, 1834.] 4 & 5 Will. 4, c. 85.

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4. [Permitting drinking Beer in a neighbouring house, shed, &c. *Repealed by 35 & 36 Vict. c. 94.*]

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2 & 3 Vict. c. 47—"An Act for further improving the Police in and near the Metropolis." [17th August, 1839.] 2 & 3 Vict.
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3 & 4 Vict. c. 61—"An Act to amend the Acts relating to the general Sale of Beer and Cider by retail in England." [7th August, 1840.] 3 & 4 Vict.
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	20. [Recited Acts to continue in force, except as hereby altered. <i>Unnecessary to refer to now.</i>]
	21. [Powers, provisions and penalties of 11 Geo. 4 & 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85, to apply to persons licensed under this Act. <i>No much as incorporates or applies any repealed enactment repealed by 35 & 36 Vict. c. 94.</i>]
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5 & 6 Vict. c. 44—"An Act for the Transfer of Licences and Regulation of Public-houses." [1st July, 1842.]

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8 & 9 Vict. c. 109—"An Act to amend the Law concerning Games and Wagers." [8th August, 1845.] 8 & 9 Vict. c. 109.

[Amended by 35 & 36 Vict. c. 94, s. 73, as to notices and offences, Chap. XVI., p. 256.]

11 & 12 Vict. c. 49—"An Act for regulating the Sale of Beer and other Liquors on the Lord's Day." [14th August, 1848.] 11 & 12 Vict. c. 49.

[The whole Act repealed by 35 & 36 Vict. c. 94, so far as it relates to England.]

18 & 19 Vict. c. 118—"An Act to repeal the Act of the Seventeenth and Eighteenth years of the reign of her present Majesty for further regulating the Sale of Beer and other Liquors on the Lord's Day, and to substitute other Provisions in lieu thereof." [14th August, 1855.] 18 & 19 Vict. c. 118.

[The whole Act repealed by 35 & 36 Vict. c. 94.]

23 & 24 Vict. c. 27—"An Act for granting to her Majesty certain Duties on Wine Licences and Refreshment-houses, and for regulating the Licensing of Refreshment-houses and the granting of Wine Licences." [14th June, 1860.] 23 & 24 Vict. c. 27.

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23 & 24 Vict. c. 113, s. 41.	23 & 24 Vict. c. 113—"An Act to grant Duties of Excise," &c. [28th August, 1860.]
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27 & 28 Vict. c. 64.	27 & 28 Vict. c. 64—"An Act for regulating the closing of Public-houses and Refreshment-houses within the Metropolitan Police District, the City of London, certain Corporate Boroughs and other places." [25th July, 1864.]
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refresh-
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which in-
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| 8. [Definition of "Local Authority"] .. | |
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Borough] | |
| 10. [Not to apply to Sales at Railway Sta-
tions between one and four in the
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28 & 29 Vict. c. 77 — “An Act to amend the Act of the Twenty-seventh and Twenty-eighth Victoria, Chapter Sixty-four, commonly called ‘The Public-house Closing Act, 1864.’” [29th June, 1865.] 28 & 29 Vict.
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27 & 28
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241—243).</i></p> |
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*Repealed
by 35 & 36
Vict. c. 94.*

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35 & 36 Vict. c. 94.]

32 & 33 Vict.
c. 27.

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34 & 35 Vict.
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34 & 35 Vict. c. 88—"An Act to restrict during a limited Time the grant by Justices of the Peace of new Licences and Certificates for the Sale of Intoxicating Liquors by retail, and for other purposes." [17th August, 1871.]

[This Act, "The Intoxicating Liquors (Licences Suspension) Act, 1871," which was to continue in force "until the 1st September, 1872, and no longer," is *wholly repealed by 35 & 36 Vict. c. 94.*]

35 & 36 Vict.
c. 94.

35 & 36 Vict. c. 94—"An Act for regulating the Sale of Intoxicating Liquors. [10th August, 1872.] *The following are the sections altered by the Act of 1874.*

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|--|---|
| Sect. 5. Seller liable for drinking on premises contrary to Licence .. | } <i>So much as relates to the records of Convictions on Licences repealed by 37 & 38 Vict. c. 49, s. 33.</i> |
| 6. Evasion of Law as to drinking on premises contrary to Licence .. | |
| 13. Penalty for permitting drunkenness | |
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| 16. Penalty for harbouring Constable | |
| 17. Penalty for permitting Gaming .. | } <i>Repealed by 37 & 38 Vict. c. 49, s. 33.</i> |
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| 21. Schedule of deleterious ingredients .. | |
| 22. Analysis of intoxicating liquor .. | |
| 24. Times of closing. <i>Repealed by 37 & 38 Vict. c. 49, s. 33.</i> | |

28. Amendment of Law as to refreshment-houses. *So much as relates to the records of Convictions on Licences repealed by 37 & 38 Vict. c. 49, s. 33.*

35 & 36 Vict.
c. 94.

35. Entry on premises by Constables. *Repealed by 37 & 38 Vict. c. 49, s. 33.*

56. For protection of owners of licensed premises in cases of offences committed by tenants. *The last paragraph of this section, beginning with the words "In a county the justices" to the end, repealed by 37 & 38 Vict. c. 49, s. 33.*

67. Limit of mitigation of penalties. *Repealed by 37 & 38 Vict. c. 49, s. 12.*

74. Interpretation of terms, &c. *So much as contains the definition of a town repealed by 37 & 38 Vict. c. 49, s. 33.*

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APPENDIX III.

TABLE OF OFFENCES.

- (1) *Offences by Licensed Persons*, p. 316.
 (2) *Offences by other than Licensed Persons*, p. 322.
 (3) *Excise Penalties*, p. 326.

•• It is impossible in the pages of this work to give all the requirements of the Acts in the columns, as done in Mr. Oke's "Synopsis." The pages referred to in the third column will give all other necessary information.

(1) *Offences by Licensed Persons.*

[N.B. The cases in which the Convictions are required to be recorded or not are shown in Chap. X., pp. 187, 188.]

Offence,	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
1. Selling <i>or</i> exposing for sale any liquor he is not authorized to sell,— <i>or</i> in a place not authorized by his licence.	35 & 36 Vict. c. 94, s. 3.	155 156 157	1st offence, £50, <i>or</i> impr. with or without h. l. for 1 month; 2nd offence, £100, <i>or</i> a like impr. for 3 months; 3rd & subsequent offences, £100, <i>or</i> impr. for 6 months.	2nd offence, offender disqualified for 5 years; and to forfeit licence; 3rd & subsequent offences, offender disqualified for ever. [The liquor found also forfeited.]
2. Allowing buyer of liquor to drink it on a highway, &c. adjoining premises not licensed for consumption <i>on</i> .	Id. s. 5.	157 158	1st offence, £10; 2nd & subsequent offences, £20.	..

NOTE.—The time for preferring the information for an offence under 35 & 36 Vict. c. 94 (except for offence 29, which is seven days), is 6 cal. m. (11 & 12 Vict. c. 43, s. 11).

Pecuniary penalties imposed by 35 & 36 Vict. c. 94, may be mitigated, but not to less than 20. after the first offence, 37 & 38 Vict. c. 49, s. 12, *ante*, p. 217.

The imprisonment in default of payment is regulated as under—if not exceeding £5, by 28 & 29 Vict. c. 127, s. 4 (*ante*, p. 213), with or without a previous distress being made: if above £5, under 35 & 36 Vict. c. 94, s. 51, subs. 2 (*ante*, p. 211).

There is an appeal against a conviction (*ante*, p. 218).

Application of penalty (*ante*, p. 212).

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
3. Taking liquor from premises not licensed for consumption <i>on</i> to other premises of licensed person to be consumed.	35 & 36 Vict. c. 94, s. 6.	158	Same as under the 3rd or 5th section, offence 1 <i>or</i> 2, as the case may require.	Same as under the 3rd or 5th section, offence 1 <i>or</i> 2, as the case may require.
4. Selling spirits to children under 16 to be consumed on licensed premises.	Id. s. 7.	159	1st offence, 20s.; 2nd & subsequent offences, 40s.	..
5. Selling, <i>or</i> suffering any servant to sell, liquor not by the standard measures.	Id. s. 8.	159	1st offence, £10; Subsequent offence, £20.	Forfeiture of illegal measure.
6. Making internal communication between licensed premises and house of public resort, &c.	Id. s. 9.	160	£10 a-day communication remains open.	Forfeiture of licence.
7. Having possession of any liquor not authorized to sell.	Id. s. 10.	160	1st offence, £10; Subsequent offence, £20.	Forfeiture of liquor and vessels containing it.
8. Not affixing to premises his name and description of licence held,— <i>or</i> putting up words as to liquors he is not authorized to sell.	Id. s. 11.	161	1st offence, 10s; 2nd & subsequent offences, £20.	..
9. Permitting drunkenness <i>or</i> riotous conduct,— <i>or</i> selling liquor to a drunken person.	Id. s. 13.	162	1st offence, £10; 2nd & subsequent offences, £20.	..
10. Permitting premises to be the resort of prostitutes by allowing them to remain longer than necessary for refreshment.	Id. s. 14.	165	1st offence, £10; 2nd & subsequent offences, £20.	..

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
11. Permitting premises to be a brothel.	35 & 36 Vict. c. 94, s. 15.	165	£20.	Forfeiture of licence, and offender disqualified for ever.
12. Harboursing constable, or supplying liquor to him while on duty,—or bribing or attempting to bribe him.	Id. s. 16.	166	1st offence, £10 ; 2nd & subsequent offences, £20.	..
13. Suffering gaming, or unlawful games, — or keeping, &c. house in contravention of Betting House Act, 16 & 17 Vict. c. 119.	Id. s. 17.	167	1st offence, £10 ; 2nd & subsequent offences, £20.	..
14. Defacing or obliterating record of conviction on his licence.	Id. s. 34.	170	£5.	..
15. Offence against provisions of any act in force relating to adulteration of drink.	37 & 38 Vict. c. 49, s. 14.	170 to 176	According to provisions of such act.	..
16. Keeping open premises at time ordered by justices to be closed in case of riot.	35 & 36 Vict. c. 94, s. 23.	150	£50.	[Justices may order house to be closed by force.]
17. Selling or exposing for sale, or opening, &c. premises for sale of liquor during prohibited hours.	37 & 38 Vict. c. 49, s. 9.	139	1st offence, £10 ; Subsequent offences, £20.	..
18. Not keeping affixed to premises notice of order exempting from closing hours.	35 & 36 Vict. c. 94, s. 26.	144	£5.	..

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
19. Keeping affixed a like notice when he does not hold an order.	35 & 36 Vict. c. 94, s. 26.	145	£10.	..
20. Allowing liquor to be consumed at refreshment house(not licensed for liquors) during the hours when inns would be closed.	Id. s. 27.	148	1st offence, £10 ; Subsequent offence, £20.	..
21. Refusing to admit constable to premises.	37 & 38 Vict. c. 49, s. 16.	178	1st offence, £5 ; Subsequent offence, £10.	..
22. Keeper of refreshment house for wine selling or opening house for sale of liquor after closing time.	35 & 36 Vict. c. 94, s. 28.	149	1st offence, £10 ; Subsequent offence, £20.	..
23. Not producing licence or exemption order to a justice, constable, or inland revenue officer, upon demand.	Id. s. 64.	180	£10.	..
24. Person licensed for beer or cider allowing wine, spirits, sweets, &c., to be brought into, or to be consumed in his house. [See also " <i>Excise Penalties.</i> "]	4 & 5 Will. 4, c. 85, s. 16.	182	£20 over and above excise penalties.	[See also 35 & 36 Vict. c. 94, s. 3, offence 1.]

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
25. Harbouring thieves or reputed thieves, <i>or</i> permitting them to meet in house, <i>or</i> allowing deposit of stolen goods.	34 & 35 Vict. c. 112, s. 10.	183 184	£10; in default of payment impr. for 4 months. In addition or in lieu of penalty sureties to keep the peace, &c. in £20 for 3 months.	1st offence, forfeiture of licence. 2nd offence, forfeiture of licence and offender disqualified for 2 years. If two convictions within 3 years, premises disqualified for 1 year.
26. Not producing licence to justices on hearing of charge of offence 27.	Id.	184	£5.	..
27. <i>Refreshment-houses.</i>] Refusing to admit <i>or</i> not admitting constable into house.	28 Vict. c. 27, s. 18.	231	1st offence, £5; on If two convictions within 2 years,	2nd offence, forfeiture of licence, and offender disqualified for 2 years. Premises disqualified for 3 years.
28. Suffering liquor to be sold, <i>or</i> gaming, <i>or</i> bad characters to be in house, <i>or</i> any act in contravention of licence.	Id. s. 32.	232	1st offence, 40s.; 2nd offence, £5; subsequent offences, £20, <i>or</i> forfeiture of licence. [See s. 30, <i>ante</i> , p. 233.]	3rd & subsequent offence, alternative forfeiture of licence, and offender disqualified for one year.
29. Keeping open house, where public-house closing act in force, between 1 and 4 a.m.	27 & 28 Vict. c. 64, s. 5.	240	£5.	..
30. <i>Billiard Licences.</i>] Other than licensed victuallers keeping table, &c. without a licence.	8 & 9 Vict. c. 109, s. 11.	263	£10 a day, <i>or</i> imprisonment for one month.	..

(1) *Offences by Licensed Persons.*

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Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
31. Offences against tenor of licence,— <i>or</i> licensed victualler allowing play at billiards while house not allowed to be opened for sale of liquors, <i>or</i> not admitting constables.	8 & 9 Vict. c. 109, ss. 12, 13, 14.	260 261 262	1st offence, £10; 2nd & subsequent offences, £20, being the same as for gaming, offence 13.	..
32. <i>Billets.</i>] Refusing to receive or properly to accommodate soldiers <i>or</i> horses.	35 Vict. c. 3, ss. 62—67,	277	£5.	..
33. <i>Music and Dancing.</i>] Keeping room, &c. for dancing, music, &c. without licence.	25 Geo.2, c. 36.	278 279	£100 [recoverable by action].	..
34. <i>Races and Fairs.</i>] Selling liquor at, without occasional licence.	37 & 38 Vict. c. 49, s. 18.	283 284	As for offence 1.	As for offence 1.

(2) Offences by other than Licensed Persons.

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
35. Occupier of unlicensed premises in which liquor sold being privy to the sale.	35 & 36 Vict. c. 94, s. 4.	202	1st offence, £20, or impr. for 1 month; 2nd offence, £100, or impr. for 3 months; 3rd & subsequent offences, £100, or impr. for 6 months. [The liquor found also forfeited.]	2nd offence, disqualified for 5 years; 3rd & subsequent offences, disqualified for ever.
36. Offence 5 also applicable.	Id. s. 8.	159
37. Offence 6 also applicable.	Id. s. 9.	160
38. Having affixed to premises words, &c. importing he is licensed to sell liquor when he is not authorized.	Id. s. 11.	202 161	1st offence, £10; 2nd & subsequent offences, £20.	..
39. Found drunk in a highway or public place,—or on licensed premises.	Id. s. 12.	202 203	1st offence, 10s.; 2nd offence within a year, 20s.; 3rd & subsequent offences within a year, 40s.	[Hard labour may be added to the imprisonment in default of payment of a penalty.]
40. Person in a highway or public place guilty while drunk of riotous or disorderly behaviour,—or drunk while in charge of any carriage, horse, &c.,—or drunk when in possession of loaded firearms.	Id.	203 204	40s., or impr. with or without h. l. for 1 month.	[Same.]

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
41. Drunken, violent, quarrelsome <i>or</i> disorderly person on premises, <i>or</i> other person whose presence there renders holder of licence liable to penalty, refusing to quit premises on request.	35 & 36 Vict. c. 94, s. 18.	205 164	£5.	[These persons may be expelled by the licensed person or his servant or a constable.]
42. Person not an inmate, servant, <i>or</i> lodger, <i>or</i> traveller found on premises when they are required to be closed.	Id. s. 25.	206	40s.	..
43. Such person not giving his name, &c. when required, <i>or</i> giving a false one, <i>or</i> giving false evidence with respect thereto.	Id.	206	£5.	..
44. Person, by falsely representing himself to be a traveller <i>or</i> lodger, buying, &c., <i>or</i> attempting to buy, &c., liquor during closing hours.	Id. and 37 & 38 Vict. c. 49, s. 10.	207	£5.	..
45. Clerk to justices taking greater fees than allowed for licences <i>or</i> in relation to register of licences.	9 Geo. 4, c. 61, s. 15;	66	£5.	..
	33 & 34 Vict. c. 23, s. 4, sub s. 3;	104	£5.	..
	35 & 36 Vict. c. 94, s. 36.	129	£5.	..
46. Clerk to justices <i>or</i> other person preventing inspection of register of licences <i>or</i> taking of copies or extracts, <i>or</i> demanding unauthorized fee.	35 & 36 Vict. c. 94, s. 36.	130	£5.	..

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
47. Clerk to justices taking unauthorized fees for billiard licence.	8 & 9 Vict. c. 109, s. 10.	258	£5.	..
48. Forging justices' certificate for a licence under Wine and Beerhouse Acts.	32 & 33 Vict. c. 27, s. 11.	208	£20, or impr. for 6 months with or without h. l.	If forged certificate used, person to be disqualified for beer, cider or wine thereafter.
49. Person convicted of felony, and thereby disqualified, selling spirits thereafter.	33 & 34 Vict. c. 29, s. 14.	208 209	Incurs the penalty for doing so without a licence.	See penalty, &c. in offence 1.
50. Witnesses refusing to attend or to be examined under Refreshment Houses Act.	23 Vict. c. 27, s. 38.	232	£10.	..
51. Drunken and disorderly persons refusing to quit refreshment-houses.	Id. s. 41.	232	40s.	..
52. Being in an unlicensed theatre.	2 & 3 Vict. c. 47, s. 46.	282	40s.	..
53. Any person who, during the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors, although purchased before the hours of closing, to be consumed in such premises.	37 & 38 Vict. c. 49, s. 9.	139	Not exceeding £10.	Subsequent offence not exceeding £20.

(2) *Offences by other than Licensed Persons.* 325

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
54. Every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of section 16 of Act.	37 & 38 Vict. c. 49, s. 16.	178	Not exceeding £5 for first offence.	Second and every subsequent offence, £10.
55. Persons found on premises on entry of constable.	Id. s. 17.	179	Not exceeding 40s.	..
56. Persons found on premises on entry of constable not giving name or address, or not answering satisfactorily questions put to him by constable.	Id.	180	Not exceeding £5.	..
57. Selling, &c. any intoxicating liquor in any booth, tent, &c., within the limits of any lawful and authorized fair or racecourse without an occasional licence; offence 34.	Id. s. 18.	283 284	See No. 1, <i>ante</i> , p. 316.	..

(3) *Excise Penalties.*

Offence.	Statute.	Page.	Maximum Penalty or Imprisonment.	Additional Forfeiture or Disqualification.
58. Selling beer without licence.	1 Will. 4. c. 64, s. 7.	245	£20.	..
59. Selling beer or cider, not for consumption <i>on</i> , without licence.	4 & 5 Will. 4, c. 85, s. 17.	246	£10.	..
60. <i>Or</i> for consumption <i>on</i> .	Id.	246	£20.	..
61. Beerhouse keepers selling wine, spirits, <i>or</i> sweets, &c. without licence.	Id. s. 20.	247	[Various penalties: see note (a), <i>ante</i> , p. 247.]	..
62. Selling beer <i>or</i> cider after being convicted of felony <i>or</i> of selling spirits without licence.	3 & 4 Vict. c. 61, s. 7.	247 248	Same penalties as offences 58, 59.	..
63. Not making entry of premises with excise.	Id. s. 9.	248	£200.	Liquor forfeited.
64. Keeping a refreshment-house without licence.	23 Vict. c. 27, s. 9.	249	£20.	..
65. Selling wine by retail without licence.	Id. s. 19.	249	£20.	..
66. Selling wine after being convicted of felony, <i>or</i> of selling spirits without licence.	Id. s. 22.	249	£20.	..
67. Refreshment-house keepers selling wine not making entry of premises.	Id. s. 23.	250	£200.	..
68. Having spirits on entered premises.	Id. s. 25.	250	£50.	Liquor forfeited and wine licence void.
69. Selling on board packet-boats without licence.	9 Geo. 4. c. 47, s. 3.	282	£10.	..

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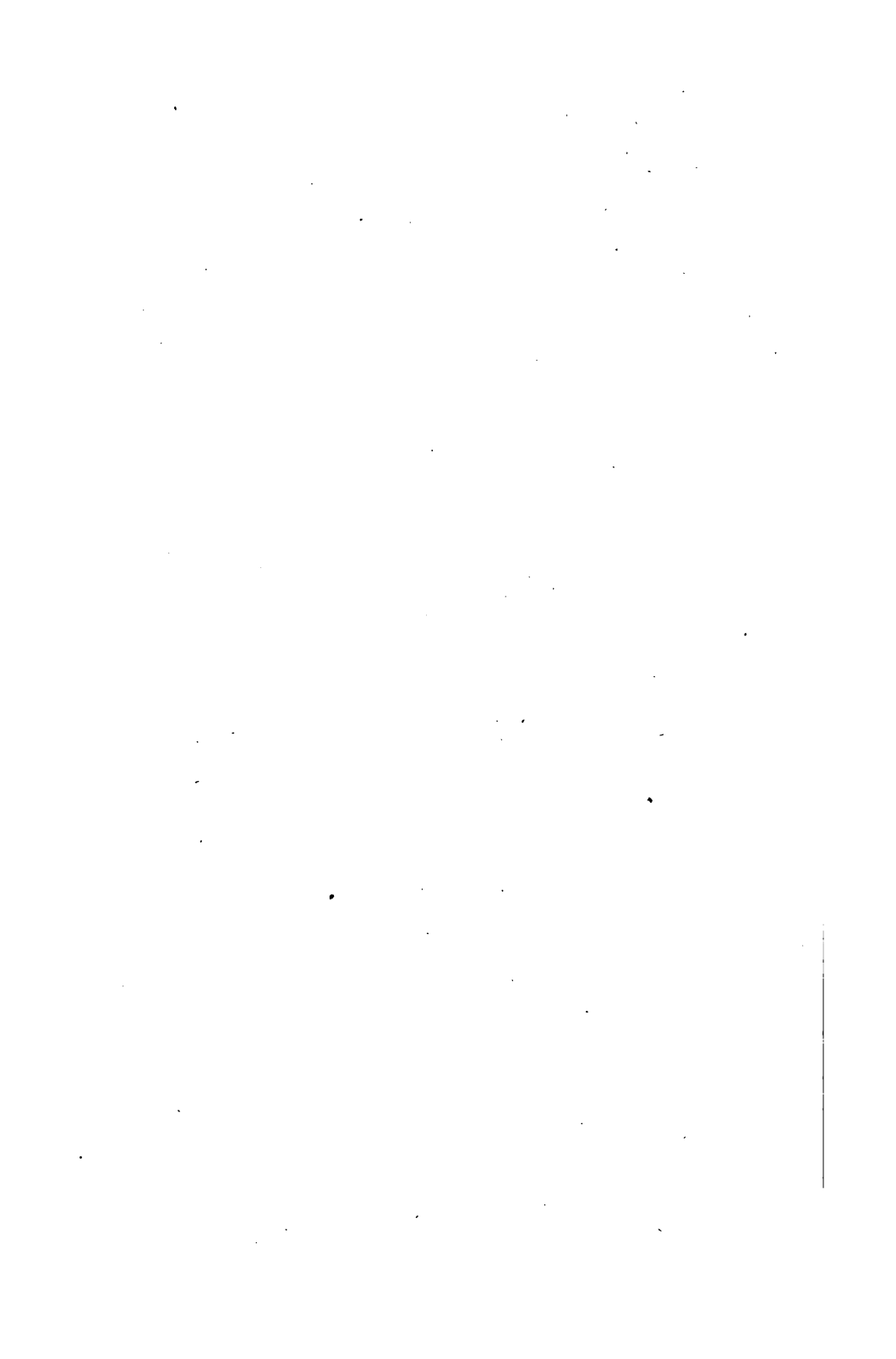
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